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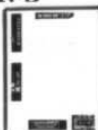
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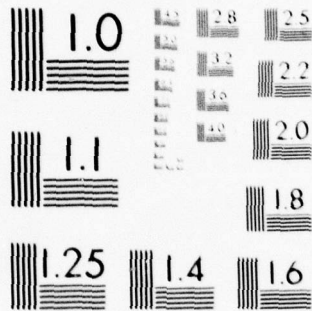
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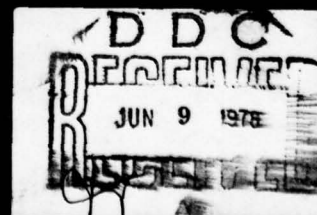
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THE EXECUTIVE POWER TO
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by
10 Francis Paul/Eutler

9 Doctoral thesis

11 1975

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A dissertation submitted to the faculty
of the University of Utah in partial fulfillment
of the requirements for the degree of

Doctor of Philosophy

New 410 707
Department of Political Science
University of Utah
Salt Lake City
Summer 1975

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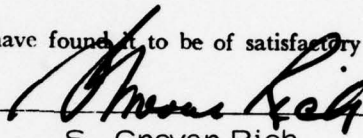
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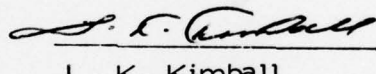


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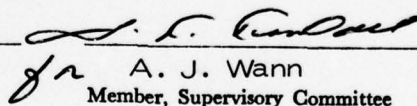


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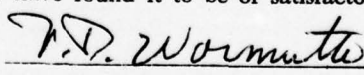


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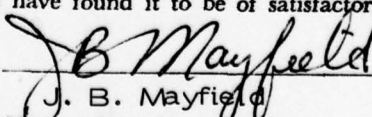


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ABSTRACT

The Constitution is clear on the subject of war powers. The framers' intent is clear and is available for all to examine. Congress, a body representative of the people, was to be trusted with the powers. Capable of deliberation, the Congress it was thought would be less likely to commit the nation to a hasty, unwise course of action than the executive, a single individual acting more often than not in his own interests. This was the way it was to be.

and so This was the way it was in most instances until 1940. Despite numerous lists that sought to prove otherwise, until 1940 clearly 85 percent of the armed hostilities in which the United States was involved were approved by the Congress. These lists were compiled largely in this past quarter century, to support Presidentially initiated hostilities, by pointing to 'precedent' and 'inherent powers' as sufficient basis for interventions in Korea, the Dominican Republic, Vietnam and Cambodia. With the Constitution clear on this subject, precedent and inherent powers were all that supporters of Presidential initiation could point to. A careful study, however, of precedent finds precedent not on the side of the Executive but of the Congress. And the inherent powers argument was precisely the evil cited by the framers in their decision to curb the king's power and instead vest in the Congress the power to involve the nation in war. The usurpation of this power by the Executive, at first evidenced only in periodic aberration, gained momentum in constant abuse by Presidents Roosevelt, Truman, Eisenhower, Kennedy, Johnson, and Nixon.

The author maintains that Centralization of the war power in the Executive has increased the stature and prominence of deception. An inseparable companion of

(cont on p vii)

** leading to*

basis of the rule of man rather than the rule of law, in the American government. A decision arrived at in Congress not only enjoys the advantage of many contrasting points of view, but the openness to which it is submitted during deliberations. A decision arrived at by a single man often does not receive the benefit of opposing views and is often arrived at in secrecy. This is especially true of a decision to arm and commit the nation to war. The decision is not one that is normally popular with the nation, unless, of course, the nation itself is threatened. In the absence of an external threat, the Executive, to accomplish policy which it considers to be in the national interest, has in the past quarter century committed the nation to armed hostilities knowing well the adverse reaction the decision would receive had it been aired in public. To prevent public or Congressional scrutiny the Executive has resorted to secret decisions made public by deceptive statements and actions. Recent administrations have executed policy decisions in deception. Aided by a handful of advisers, not accountable to Congress or the people, Presidents have completed the usurpation of the power to make war, and this small group has enjoyed fully the power derived from centralization: the power to deceive.

As you know, in times of war and of hostilities,
the first casualty is truth.

U Thant
February 24, 1965

No one will question that this power, this vague, undefined and undefinable "war power" is the most dangerous one to free government in the whole catalogue of powers. It is usually invoked in haste and excitement when calm legislative consideration of constitutional limitation is difficult. It is executed in a time of patriotic fervor that makes moderation unpopular ... Always, as in this case, the Government urges hasty decision to forestall some emergency or serve some purpose and pleads that paralysis will result if its claims to power are denied or their confirmation delayed.

Justice Robert H. Jackson
concurring in *Woods v. Miller Co.*,
333 U.S. 138, 146 (1948)

INTRODUCTION

Allow a President to invade a neighboring nation, whenever he shall deem it necessary to repel an invasion ... and you allow him to make war at pleasure. Study to see if you can fix any limit to his power in this respect ... If today, he should choose to say he thinks it is necessary to invade Canada, to prevent the British from invading us, how could you stop him? You may say to him, "I see no probability of the British invading us, " but he will say to you, "Be silent; I see it, if you don't." 1

Congressman Abraham Lincoln
of Illinois

Today the executive alone has the power to "see it." And this despite attempts such as the Senate Committee on Foreign Relations in its report of November, 1967, National Commitments Resolution:

Whereas the executive and legislative branches of the United States Government have joint responsibility and authority to formulate the foreign policy of the United States, and

Whereas the authority to initiate war is invested in Congress by the Constitution: Now, therefore be it

Resolved, That a commitment for purposes of this resolution means the use of, or promise to a foreign state or people to use the Armed Forces of the United States either immediately or upon the happening of certain events, and,

That it is the sense of the Senate that, under any circumstances which may arise in the future pertaining to situations in which the United States is not already involved, the commitment of the Armed Forces of the United States to hostilities on foreign territory for any purpose other than to repel an attack on the United States or to protect United States citizens or property will result from a decision made in accordance with constitutional processes, which in addition to appropriate executive action, require action by

Congress specifically intended to give rise to such commitment. 2

But in April 1970, only President Nixon and his closest advisers saw the need to invade Cambodia.

The Congress before 1940, despite numerous attempts to prove otherwise,³ did exercise its constitutional powers to commit the nation to war. It was only after 1940, the period with which the greater part of this effort is concerned, that Congress totally lost its powers in the arena of war, and that the executive branch, which acquired them partially through usurpation of Congressional power and partially through the voluntary surrender of them by Congress, began the long list of deceptions beginning with President Roosevelt's "Undeclared War" and culminating with five successive Presidents' involvement in Vietnam. This final and still unravelling chapter of American involvement in war realizes the apex in executive deception, with a "policy of lying that was hardly ever aimed at the enemy, but was destined chiefly, if not exclusively, for domestic consumption, for propaganda at home, and especially for the purpose of deceiving Congress."⁴ This present effort is undertaken to bring to light the enormity of executive deception in its exercise of the war power, and to assert that secrecy and deception are the inevitable result of the centralization of power, especially the war power, in the executive branch. Professor Ruhl Bartlett, testifying before the Senate Committee on Foreign Relations in August 1967 concluded that

...the greatest danger to democracy in the United States and to the freedom of its people and their welfare - as far as foreign affairs are concerned - is the erosion of legislative authority and oversight and the growth of a vast pyramid of centralized power in the executive branch of the government. 5

In earlier testimony Professor Bartlett had asserted that,

... the positions of the Executive and Legislative branches of the Federal Government in the area of foreign affairs have come very close to reversal since 1789, a change that has been gradual in some degree but with accumulation during the past half-century and breakneck speed during the past 20 years,

The President virtually determines foreign policy and decides on war and peace, and the Congress has acquiesced in or ignored, or approved and encouraged this development. 6

Accepting Bartlett's premise that before World War II, Presidential exercise of Congressional power in foreign affairs had occurred, Merlo J. Pusey, however, looks on "the deviations from constitutional doctrine ... as aberrations."⁷ He is in full agreement with Professor Bartlett that

... Under several recent Presidents, both theory and practice have sought to make presidential commitments the norm instead of highly dubious exceptions. It now seems clear that unless some drastic shift can be brought about, in attitudes and in the law of the land, our country will be as much at the mercy of one man for the maintenance of peace as were the ancient kingdoms and empires before the dawn of democratic government. 8

The constitutional powers of the Executive and of the Congress in their respective roles as protector of the Nation were considered carefully by the Founding Fathers. The results were:

Art. I, Sec. 8: The Congress shall have the power to ... provide for the common defense ... to declare war ... to raise and support armies, but no appropriation of money to that use shall be for a longer term than two years; to provide and maintain a Navy; to make rules for the government and regulations of the land and naval forces ... to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Art. II, Sec. 2: The President shall be Commander in Chief of the Army and Navy of the United States,

and of the Militia of the several States, when called into the actual Service of the United States.

The original draft of the Constitution that was submitted to the Constitutional Convention of 1787 gave to Congress the power to "make war."⁹ Pierce Butler of South Carolina favored investing the power in the President, "who will have all the requisite qualities, and will not make war but when the Nation will support it."¹⁰ Mr. Madison and Mr. Elbridge Gerry of Massachusetts "moved to insert 'declare' striking out 'make' war; leaving to the Executive the power to repel sudden attacks."¹¹ Mr. Roger Sherman of Connecticut thought the executive should be enabled to repel attacks, but "not to commence war." and Mr. Gerry stated that in a republic he had never expected to hear during the course of discussion a motion "to empower the Executive alone to declare war."¹² And, Mr. Oliver Ellsworth of Connecticut asserted what for the nation today is the height of irony: "there is a material difference between the cases of making war and making peace. It should be more easy to get out of war, than into it."¹³

But what is more tragic than ironic for the American people and the Congress today is finally the statement by George Mason of Virginia, who opposed giving the President "the power of war ... because (he) was not safely to be trusted with it."¹⁴

Alexander Hamilton, who as an advocate of strong executive power, explained the limiting features of the President's role as Commander-in-Chief in Federalist Number 69:

The President is to be Commander-in-Chief of the Army and Navy of the United States. In this respect his authority would be nominally the same with that of the King of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as first general and admiral of the confederacy, while that of the British

King extends to the declaring of war and to raising and regulating of fleets and armies - all which, by the Constitution under consideration, would appertain to the legislature. 15

What the framers of the Constitution intended was to be less than two hundred years later not forgotten, but simply inverted. Though "In direct contrast to the power of the British sovereign to initiate war on his own prerogative, the clause, to "make war" which appeared in early drafts of the Constitution, was the result of a deliberate decision by the framers to vest the power to embark on war in the body most broadly representative of the people,"¹⁶ today the power to "make war," just as it did in the British sovereign in the eighteenth century, resides in the American executive. The clause "to declare war" replaced "to make war" solely to assure the executive's power "to repel sudden attacks."

The first Presidents were more than deferential in their respect for Congressional power to commit the nation to war or acts of war. Included among them were the framers of the Constitution, and those near to the framers. Those who did not participate in the actual discussions showed a remarkably clear understanding of the framers' intentions concerning the war power. When in 1801 President Jefferson was confronted by belligerent acts against American vessels by Tripoli, he went to Congress for power to act:

Unauthorized by the Constitution, without the sanction of Congress, to go beyond the line of defense, the vessel being disabled from committing further hostilities, was liberated with its crew. The Legislature will doubtless consider whether, by authorizing measures of offense, also, they will place our force on an equal footing with that of its adversaries. I communicate all material information on this subject, that in the exercise of this important function confided by the Constitution to the Legislature exclusively their

judgement may form itself on a knowledge and consideration of every circumstance of weight. 17

Although when in 1805 he thought it might become necessary to use limited force to protect citizens if Spain intervened in a border dispute between Louisiana and Florida, he again went to Congress, this time with a special message:

Considering that Congress alone is constitutionally invested with the power of changing our condition from peace to war, I have thought it my duty to await their authority for using force in any degree that could be avoided ... Formal war is not necessary - it is not probable it will follow; but the protection of our citizens, the spirit and honor of our country require that force should be interposed to a certain degree. It will probably contribute to advance the object of peace. 18

President Madison, rather than asking for a declaration of war from Congress in June 1812, instead invited them to deliberate the seriousness of continued British action against American shipping:

... whether the United States shall continue passive under these accumulating wrongs, or, opposing force to force in defense of their national rights, shall commit a just cause into the hands of the Almighty Disposer of Events ... is a solemn question which the Constitution wisely confides to the legislative department of the Government. 19

How, in the intervening century and a quarter, could a question "wisely confided to the legislative department" become the center of secrecy and deception in the executive department? It is an evolution claimed by some to have its roots in inherent power and precedent. The Constitution and the intentions of its framers are clear on the question of inherent power. The myth that precedents set the course to be followed by the modern executive is to be dispelled in the first chapter. The answer to the question is instead found in a close examination of executive use of the war power since 1940. It is an

examination fraught with secrecy and deception, a necessary result of confiding in the executive the power over war and peace. The transfer of this power from the Congress to the Executive, a process today completed, leaves its victims, the Congress and the American people the inheritors of several executive lies and deceptions, and of the conclusion by the Senate Foreign Relations Committee in 1967:

Already possessing vast powers over our country's foreign relations, the executive, by acquiring the authority to commit the country to war, now exercises something approaching absolute power over the life or death of every living American - to say nothing of millions of other people all over the world. There is no human being or group of human beings alive wise and competent enough to be entrusted with such vast power. Plenary powers in the hands of any man or group threatens all other men with tyranny or disaster. Recognizing the impossibility of assuring the wise exercise of power by any one man or institution, the American Constitution divided that power among many men and several institutions and, in doing so, limited the ability of any one to impose tyranny or disaster on the country. The concentration in the hands of the President of virtual authority over matters of war and peace has all but removed the limits to executive power in the most important single area of our national life. Until they are restored the American people will be threatened with tyranny or disaster. 20

Notes

¹Roy P. Basler, et. al., eds., The Collected Works of Abraham Lincoln, 1 (New Brunswick: Rutgers University Press, 1953), p. 451.

²U.S., Congress, Senate, National Commitments, S. Rept. 797, 90th Cong., 1st sess., 1967, p. 1.

³Over a very long period in our history, practice and precedent have confirmed the constitutional authority to engage United States forces in hostilities without a declaration of war. U.S. Department of State, "The Legality of United States Participation in the Defense of Viet-Nam," 54 Dep't of State Bill, 474, 488 (1966). See Chapter 3, infra.

⁴Hannah Arendt, Crisis of the Republic (New York: Harcourt Brace Jovanovich, 1972), p. 14.

⁵U.S. Congress, Senate, Committee on Foreign Relations, United States Commitments to Foreign Powers, Hearings, before the Committee on Foreign Relations, 90th Cong., 1st sess., 1967, p. 21.

⁶Ibid., p. 20.

⁷Merlo J. Pusey, The Way We Go to War (Boston: Houghton Mifflin, 1971), p. 5.

⁸Ibid.

⁹Max Farrand, ed., The Records of the Federal Convention of 1787, 1 (New Haven: Yale University Press, 1911), p. 318.

¹⁰Ibid.

¹¹Ibid.

¹²Ibid.

¹³Ibid., p. 319.

¹⁴Ibid.

¹⁵The Federalist, No. 69 (New York: The Modern Library, 1937), p. 448.

¹⁶"Congress, the President, and the Power to Commit Forces to Combat," Harvard Law Review, 81 (June, 1968), 1772.

¹⁷James D. Richardson, ed., Compilation of Messages and Papers of the Presidents, 1 (Washington: Government Printing Office, 1896), p. 314.

¹⁸Ibid., pp. 389-390.

¹⁹Richard B. Morris, Great Presidential Decisions (Philadelphia: J.E. Lippincott, 1960), p. 50.

²⁰U.S., Congress, Senate, National Commitments, pp. 26-27.

CHAPTER I

THE USE OF UNITED STATES ARMED FORCES IN FOREIGN COUNTRIES

1798 - 1975

The making of lists of acts of hostility by American forces abroad began in the twentieth century; in the last twenty years it has become a national preoccupation. The number of episodes varies from list to list. J. Reuben Clark, who compiled the first list in 1912, cited 41 instances of forces being landed to protect American citizens in foreign countries between 1812 and 1910.¹ In 1934 his study was republished with a supplemental index which covered the period between 1910 and 1933.² The supplement listed the use of American armed force in 11 countries during this period. In China alone there occurred approximately 30 separate landings of American forces between 1911 and 1927. In a study published in 1928, Milton Offutt listed 77 instances of protection of citizens abroad by the use of threat of force between 1813 and 1926.³ In 1934 Captain Harry Alanson Ellsworth, The Officer in Charge of the United States Marine Corps Historical Section, in a mimeographed compilation of Marine Landings, listed 180 instances of United States Marines landing on foreign shores for various reasons and under differing conditions of hostility between 1800 and 1934.⁴ Senator Connally, speaking in the Senate on July 10, 1941, in defense of President Roosevelt's occupation of Iceland, pointed to 85 prior cases of the United States' having committed armed forces abroad.⁵ In 1945 James Grafton Rogers listed

149 cases or groups of cases under the heading "A Chronological List of Military Operations of the United States Abroad."⁶ Rogers stated that "all actions appear to have been undertaken solely on Executive Authority" except for "the few cases in which authority of Congress was found for the employment of guns and men ... Such cases are those of the five declared wars and here and there others besides; ... they are very few, only a dozen or two."⁷ In 1950 the State Department defended President Truman's commitment of American armed forces to the Korean War in a memorandum entitled "Authority of the President to Repel Aggression in Korea."⁸ A portion of the defense consisted of a list of 85 instances of the "Use of Land and Naval Forces of the United States for Protection Purposes,"⁹ which, in fact, was the list compiled by Senator Connally. In 1951, a document prepared for the Committee on Foreign Affairs of the House of Representatives appeared under the title "Background Information on the Use of United States Armed Forces in Foreign Countries."¹⁰ This report, prepared to aid the Committee in its effort to determine "the extent of the executive power to commit the Nation to military action,"¹¹ contained a list of 165 "Instances of the Use of United States Armed Forces Abroad, 1798-1945."¹² An updated version of this document¹³ bearing the same title was prepared in 1970 for the Subcommittee on National Security Policy and Scientific Developments of the Committee on Foreign Affairs, which at the time was engaged in the "War Power" hearings. It listed 171 instances of United States armed forces being committed abroad. In 1967 the State Department published a list of 137 instances of armed action initiated by the United States between 1798 and 1967 without a declaration of war.¹⁴ On April 26, 1971, Senator Barry Goldwater

published in the Congressional Record a list of "153 Military Actions Taken by the United States Abroad Without a Declaration of War."¹⁵ Recently Senator Goldwater increased to 192 the instances that the United States has been involved in foreign military hostilities without a declaration of war.¹⁶ He asserts that "no less than 111 actions were undertaken solely on Executive authority without the initial support of any related statute or treaty, let alone a declaration of war."¹⁷

Some of the acts of hostility in these lists were authorized by Congress. In *Las v. Tingy*¹⁸ the Supreme Court distinguished between general wars and limited or imperfect wars, and held that it belonged to Congress to initiate both general and limited war.¹⁹ The five general wars have involved eleven declarations of war. On nine occasions Congress has authorized or ratified limited war or specific acts of hostility.²⁰

Subtracting these twenty from a total of 209 instances of acts of hostility by the United States toward foreign countries,²¹ there remain a considerable number of armed actions which Congress did not individually authorize by joint resolution. More than half of them, however, as we shall see, have been collectively authorized by a general act of Congress. This fact has been ignored by all the list-makers. They have treated all the cases in which Congress has not passed a joint resolution directed at a named state as cases of executive action. Various interpretations have been put on these purportedly executive actions. J. Reuben Clark observed that most of his cases were naval landings to protect citizens and their property, and suggested, without affirming, that such landings could be justified under the President's executive power.²² International law was incorporated in the law of the United

States, and citizens were entitled to protection abroad at international law; the President might then execute international law by ordering landings to protect citizens. Senator Connally was the first to use a list of purportedly unauthorized executive actions to expand the commander-in-chief clause.²³ In 1941 he undertook to justify President Franklin D. Roosevelt's action in sending troops to Iceland²⁴ by citing 85 cases of armed action abroad from the 1934 revision of J. Reuben Clark's list. The State Department relied on James Grafton Rogers' totals to imply that it lay within presidential power to enter into the Korean and Vietnam Wars.²⁵ Senator Goldwater has concluded that his lists support the proposition that the President has "the power of war and peace."²⁶

On the other hand, some spokesmen for the Nixon administration have attributed very limited significance to the traditional lists of executive actions. Under interrogation by Congressman Fascell of the House Subcommittee on National Security Policy and Scientific Developments, Assistant Attorney General Rehnquist, (now Associate Justice Rehnquist) claimed no constitutional power for the President to initiate war.

Mr. Fascell. Mr. Rehnquist, you have stated specific precedents and I believe you said that the President has the right to act in these specific circumstances. You enumerated them.

Mr. Rehnquist. Repelling sudden attack ...

Mr. Fascell. What was the other one?

Mr. Rehnquist. Protecting the safety and lives of American forces in the field.

Mr. Fascell. Also American citizens abroad?

Mr. Rehnquist. Yes, and making tactical decisions as to how hostilities lawfully commenced shall be prosecuted. 27

Secretary of State Rogers, testifying before the Senate Committee on Foreign Relations, referred to several cases of "presidential initiative,"²⁸ but under interrogation he said that he had not intended to suggest that these actions were constitutional: "I said just the opposite."²⁹

The fact is that all these lists contain cases of different sorts: some categories are constitutional; others are unconstitutional. But two of the justifications sometimes offered for particular interventions must be discarded. In 1790 Congress passed an act against piracy in American waters and on the high seas,³⁰ and many legal actions have been taken thereunder.³¹ But the act did not authorize naval forces to pursue pirates onto foreign soil.³² From 1819 to 1825 pirates put out from Spanish islands in the Caribbean, plundered American shipping, and fled to the safety of shore. When Commodore Porter was appointed to the command of the West Indian squadron in 1823, Secretary of the Navy Thompson exceeded his own authority by authorizing Porter to pursue pirates ashore under carefully defined conditions:

In regard to pirates there is no neutral party; they being the enemies of the human race, all nations are parties against them, and may be considered as allies. The object and intention of our government is to respect the feelings, as well as the rights of others, both in substance and in form, in all the measures which may be adopted to accomplish the end in view. Should, therefore, the crews of any vessels which you have seen engaged in acts of piracy or which you have just cause to suspect of being of that character, retreat into the ports, harbors or settled parts of the islands, you may enter in pursuit of them, such ports, harbors, and settled parts of the country for the purpose of aiding the local authorities, or people as the case may be, to seize and bring the offenders to justice, previously giving notice that this is your sole object. Where the government exists, and is felt, you will in all instances respect the local authorities, and only act in aid of and cooperation with them; it being the exclusive purpose of the United States to suppress

piracy; an object in which all nations are equally interested; and in the accomplishment of which, the Spanish authorities and people will, it is presumed, cordially co-operate with you. 33

But President Monroe believed that such action needed Congressional sanction. On December 7, 1824, in his annual message to Congress, he raised the problem and said: "Whether those robbers should be pursued on the land, the local authorities be made responsible for these atrocities, or any other measure be resorted to to suppress them, is submitted to the consideration of Congress."³⁴

The other justification applied to some of the items in the lists is the treaty of 1846 with New Granada.³⁵ Senator Goldwater asserts that the landings of the United States naval forces in the United States of Colombia in the years 1865, 1868, 1885 (on two occasions) were either impliedly authorized or flatly authorized by this treaty.³⁶ Article 35 of the treaty provided:

... in order to secure themselves the tranquil and constant enjoyment of these advantages, and for the favors that they have acquired by the 4th, 5th, and 6th articles of this treaty in which New Granada guaranteed the open and free transport across the Isthmus of Panama to the government and citizens of the United States, the United States guarantee, positively and efficaciously, to New Granada, by the present stipulation, the perfect neutrality of the before-mentioned isthmus, with the view that the free transit from the one to the other sea may not be interrupted or embarrassed in any future time while this treaty exists. 37

In 1861 the United States Minister to Colombia became the first in a long succession of United States government spokesmen to interpret the obligation the United States incurred as a result of the treaty as one of preserving the neutrality of the isthmus only in the event of foreign attack.³⁸ The treaty therefore did not require the United States to deviate from its well defined policy of nonintervention

in the domestic affairs of other nations.³⁹ The landings which the United States carried out, allegedly under the provisions of the 1846 treaty, were not to guarantee neutrality but were, when lawful, an exercise of police power to protect property and lives of American citizens during local civil and revolutionary disorders under statutory authorization. In the case of none of these landings was there a threat to the neutrality of New Granada or Colombia. The landings occurred at the discretion of various echelons of command within the Navy. It should also be observed that in any case the President and Senate have no power to commit naval or military forces by treaty.

Although these attempts to justify particular naval interventions fail, it will be possible to show that a certain category of naval actions enjoyed statutory authorization. Naval actions fall into two categories, landings to rescue or protect citizens⁴⁰ and naval acts of reprisal.⁴¹ It is the first category that concerns us here. Naval landings to rescue or protect citizens constitute more than half of the actions called independent executive actions on any list. When these naval landings authorized by Congress are subtracted, the lists are considerably less impressive.

As we have seen, Commodore Porter was given orders, surely invalid because not Congressionally authorized, to enter Spanish territory in pursuit of pirates. It seems more than probable that some at least of the 13 landings to protect citizens or their property before 1862 enjoyed similar executive authorization;⁴² but such authorization, if it occurred, was invalid. There were two constitutional impediments. The entry of armed forces into foreign territory without the permission of the foreign sovereign might be an act of war,⁴³ which only Congress

might authorize.⁴⁴ And it belongs to Congress rather than to the Secretary of the Navy "to make rules for the government and regulation of the land and naval forces."⁴⁵

On February 15, 1853, President Pierce issued a "System of Orders and Instructions for the Navy." Attorney General Caleb Cushing ruled that these were illegal.

On the letter and theory of the Constitution the President has no separate legislative powers. The Constitution has carefully distinguished the two powers, the executive or administrative, and legislative, one from the other. The President, whether as Executive of the United States, or as commander-in-chief of the Army and Navy, has no legislative power of himself alone, except in his peculiar relation to, and conjunction with, the two Houses of Congress. But the "System of Orders and Instructions" is, in my judgment, an act in its nature essentially and emphatically legislative, not executive, and therefore, can have no legality, unless or until sanctioned by Congress, either by previous authorization, or by subsequent enactment, neither of which grounds of legality does it possess ...

In the views thus presented, it is not intended to say that the President, as commander-in-chief of the land and naval forces, has not some power to issue directions and orders. So has a commander in command of a squadron, or a general in the field, but such orders and directions, when issued by the President, must be within the range of purely executive or administrative action. 46

But in 1862 Congress passed an act which read:

That the orders, regulations, and instructions heretofore issued by the Secretary of the Navy be, and are hereby, recognized as the regulations of the Navy Department, subject, however, to such alterations as the Secretary of the Navy may adopt, with the approbation of the President of the United States. 47

Under this authority the Secretary of the Navy in 1865 issued a printed volume of Regulations for the Government of the United States Navy.⁴⁸

These did not specifically authorize landings, but they instructed the commander-in-chief of a fleet or squadron:

310. On arriving within the limits of his station on foreign service, he is to place himself in communication with the diplomatic agents of the United States thereabouts, and is to afford them, on his own responsibility, such aid and cooperation in all matters for the benefit of the government as they may require, and as he may judge to be expedient and proper. 49

This should be read together with the 1863 edition of The United States Consul's Manual: A Practical Guide for Consular Officers, which provided:⁵⁰

467. Consular officers will refrain from requesting, except through medium of the Department of State, the presence of United States vessels at the ports in their respective consular districts, unless for the protection of the lives and property of American citizens which might be endangered by delay; in such a case the consular officer will present to the commander of the vessel a statement of the facts, who will act upon his own responsibility, subject to the general or specific orders he may have received from the Navy Department. 51

The upshot of these two provisions is that a senior naval officer, by virtue of regulations prescribed by the Secretary of the Navy under authorization by Congress, should, on his own responsibility and on his own evaluation of the situation, act "for the protection of the lives and property of American citizens which might be endangered by delay."

The protection of landing forces was requested on 26 occasions by consular agents during the period between 1865 and 1958.⁵² During this same period forces were landed on 15 other occasions to protect consular property, and though no evidence that the landings were a result of a request by a consular officer survives, one would suspect that this was indeed the case.⁵³

In 1868, Consular Regulations: A Practical Guide for Consular Officers⁵⁴ was issued. Article 535 of this edition reproduced verbatim Article 467 of the 1863 edition of the United States Consul's Manual.⁵⁵

In 1870 the Navy Department issued a new series of Regulations for the Government of the United States Navy.⁵⁶ The "Duties of the Commander-in-Chief" had undergone serious revision. The articles replacing Article 310 of the 1865 Regulations in the 1870 edition provided:

52. He will preserve, so far as in him lies, the best feeling and the most cordial relations with the ministers and consuls of the United States on foreign stations, and will extend to them every official courtesy. He will also duly consider such information as they may have to give him relating to the interests of the United States, but he will not receive orders from such sources, and he will be responsible to the Secretary of the Navy, in the first place, for his acts.

53. He will not take upon himself the power of inflicting punishment upon the people of any civilized nation with whom we have treaties, for any violation alleged or otherwise of such treaties or of international law.

54. In the absence of a diplomatic representative of the United States, he will enter into correspondence on matters of this kind with the authorities of the nation which may be supposed to have been the aggressor, and will take the earliest opportunity to communicate all the information in his possession to the government of the United States. 57

We see here a careful admonition to the naval commander not to treat information from ministers and consuls regarding the interests of the United States as an obligation or order to act. The commander is responsible to the Secretary of the Navy for his acts, not to ministers and consuls on foreign station. His prerogative to act remains, but he is cautioned that this prerogative is his by virtue of the Secretary of the Navy's vesting it in him, not the consular service. The addition of this admonition to the commander-in-chief in the 1870 Naval Regulations does say "as they may require," possibly lending itself to the interpretation that "aid and cooperation" is to be afforded "as they may order"; however, no such instances of this

interpretation are known. Events between 1865 and 1870 hardly justify this stern warning to naval commanders not to receive orders from ministers and consuls of the United States on foreign service. In 1865, the United States consul at Panama requested a landing force from the U.S.S. St. Marys to protect the lives and property of American residents during a revolution there.⁵⁸ A possible explanation might lie in Article 53 of the 1870 Regulations. No provision forbidding reprisals by naval commanders appears in the 1865 edition of the Naval Regulations. However, during this period between 1865 and 1870 there occurred two instances of reprisal ordered by a naval commander. Curiously enough, both were ordered by the same officer, Rear Admiral Henry H. Bell.⁵⁹ The first occurred in 1866 in China and the second in 1867 on the island of Formosa. In the second instance, approximately 180 officers and men were landed under the command of Admiral Bell to punish natives of Formosa who allegedly had murdered the crew of the American barque Rover when it had been wrecked on the southeastern part of the island. The first case requires a closer examination. The American Consul at New Chwang, Francis P. Knight, was molested and assaulted by forces under one of the many war lords who roamed the territory during the period and harassed foreigners. Rear Admiral Bell, commanding the Asiatic Squadron, ordered Commander Robert Townsend, aboard the U.S.S. Wachusett, to New Chwang to insure that the leader and the men involved in the assault were properly punished. Commander Townsend verified that the men who had participated in the incident were being brought to justice by the Chinese authorities; however, when it appeared the leader was not going to be arrested, Commander Townsend sent a sizeable force ashore to arrest this man and insure that he was eventually

convicted. Though no evidence exists that any orders were given by consular officers or received by naval officers to execute a landing designed to avenge the injury to the American Consul at New Chwang, this is the only case during this period in which questionable conduct occurred involving both naval and consular officers. In any event, Article 53 of the 1870 edition of Naval Regulations included a specific prohibition on acts of reprisal, and corrected this omission from the 1865 edition.

Whatever the reason for the change in the naval regulations, in 1874 the Regulations Prescribed for the Use of the Consular Service of the United States⁶⁰ reflected the same change in policy. Consular officers were warned that "the Navy is an independent branch of the service, not subject to orders of this Department." Article 56 of the 1874 Regulations in its entirety read:

56. They are also reminded that the Navy is an independent branch of the service, not subject to the orders of this Department, and that its officers have fixed duties prescribed for them; they will therefore be careful to ask for the presence of a naval force at their ports only when public exigencies absolutely require it, and will give the officers in command in full the reasons for the request, and leave with them the responsibility of action. 61

The change in the 1870 Naval Regulations directing naval commanders not to receive orders from ministers and consuls and the change in the 1874 Consular Regulations cautioning consular officers that naval commanders were not subject to their orders imply, at least to this writer, that cases had occurred in which improper orders were given and received, thus resulting in the necessity for the revision of the respective provisions in both sets of regulations. This writer, however, has not been able to discover an incident which might have provoked both changes

other than Admiral Bell's action in China, which hardly seems grave enough to have produced such repercussions.

In 1876 the Navy again revised its regulations; however, the provisions covering the duties of the commander-in-chief with regard to ministers and consuls of the United States on foreign stations remained virtually unchanged.⁶² Regulations for the Consular Service were revised in 1881,⁶³ 1888,⁶⁴ and 1896⁶⁵ and these too continued the provisions of Article 56 of the 1874 edition of the regulations.

In the meantime Congress had taken action of considerable legal significance. The Revised Statutes, adopted in 1874, re-enacted verbatim the act of 1862 authorizing the Secretary of the Navy to make rules for the government of the Navy under which the regulations of 1865 and 1870 had been promulgated.⁶⁶ The delegation was repeated in the act of 1956,⁶⁷ which reads: "United States Navy Regulations shall be issued by the Secretary of the Navy with the approval of the President."

The 1893 edition of the Naval Regulations⁶⁸ contained a striking clarification of our problem. Under the heading of "A Commander-in-Chief", three articles read:

On occasions where injury to the United States or to citizens thereof is committed or threatened, in violation of the principles of international law or treaty rights, he shall consult with the diplomatic representative or consul of the United States, and take such steps as the gravity of the case demands, reporting immediately to the Secretary of the Navy all the facts. The responsibility for any action taken by a naval force, however, rests wholly upon the commanding officer himself.

The use of force against a foreign or friendly state, or against anyone within the territories thereof, is illegal. The right of self-preservation however, is a right which belongs to states as well as to individuals, and in the case of states it includes the protection of the state, its honor, and

its possessions, and the lives and property of its citizens against arbitrary violence, actual or impending, whereby that state or its citizens may suffer irreparable injury. The conditions calling for the application of the right of self-preservation cannot be defined beforehand, but must be left to the sound judgment of responsible officers, who are to perform their duties in this respect with all possible care and forbearance. In no case shall force be exercised in time of peace otherwise than an application of the right of self-preservation as above defined. It can never be exercised with a view to inflicting punishments for acts already committed. It must be used only as a last resort, and then only to the extent which is absolutely necessary to accomplish the end required.

Whenever in the application of the above mentioned principles it shall become necessary to land an armed force in foreign territory on occasions of political disturbance where the local authorities are unable to give adequate protection to life and property, the assent of such authorities or of some one of them, shall first be obtained, if it can be done without prejudice to the interests involved. 69

Here is general authorization, carefully safeguarded as to circumstances, to naval commanders to land forces to protect the lives and property of citizens under the national right of self-preservation. The exercise of this authority is "left to sound judgment of responsible officers" to discern when a landing is necessitated by "the right of self-preservation (which) cannot be defined beforehand." The assent of local authorities is desirable, but not necessary when it cannot be obtained "without prejudice to the interests involved."

The codes promulgated in 1896,⁷⁰ 1905,⁷¹ 1920,⁷² and 1948⁷³ have contained substantially identical provisions. Since 1893 there have been 79 naval landings for the protection of citizens and their property.⁷⁴ Between 1865 and 1893 there had been 24 landings.⁷⁵ All 103 landings took place under Congressional authorization.

The question is bound to arise as to whether the act of 1862, if interpreted to permit the authorization of naval landings, was not so broad as to amount to an unconstitutional delegation of legislative power. Even if this were the case, the landings after 1865 would not be authority for the proposition that there is an executive right to carry out landings. Rather, they would be evidence of an unsuccessful attempt to exercise legislative power.

Nevertheless the question of delegation ought to be discussed. The act of 1862 does not specify the purposes for which rules are to be made. Is it an attempt to delegate the war power, which would be unconstitutional? Or if it is not that, is it nevertheless so broad that it constitutes "delegation running riot"?⁷⁶

The Supreme Court has held that Congress may not delegate legislative powers conferred upon it by the Constitution.⁷⁷ Congress may, however, "commit something to the discretion of the other departments, and the precise boundary of this power is a subject of delicate and difficult inquiry, into which a court will not enter unnecessarily."⁷⁸ Though Congress may not delegate to the President or heads of departments legislative powers, "it may, in conferring powers constitutionally exercisable by him, prescribe or omit prescribing, special rules of their administration, or may specially authorize him to make the rules. When Congress neither prescribes them, nor expressly authorized him to make them, he has the authority, inherent in the powers conferred, of making regulations necessarily incidental to their exercise."⁷⁹ Therefore, it is clear that Congress may enact a law and may, at the same time, delegate the power to make necessary rules and regulations incidental to its implementation. This, then, is not a delegation of

legislative power, but rather it is a grant of authority to determine factors upon which the operation of the law is made to depend.⁸⁰ Congress is able only to legislate in a general manner, thereby, leaving to the executive departments the overall responsibility to exercise wisely large reservoirs of power. In its strictest interpretation this might be termed delegation of Congressional legislative powers; however, the vastness of the executive department, coupled with the complexity of its operations, makes this necessary.⁸¹ In fact, the authority exercised by department heads is "quasi legislative."⁸² The Constitution gives to the Congress power to make all laws necessary and proper to execute the powers conferred upon all departments and officers of the United States by the Constitution. That power was exercised by Congress when it authorized the head of a department to "prescribe regulations, not inconsistent with law, for the government of his Department, the conduct of its officers and clerks"⁸³ Even though a regulation may not be indispensable to effectuate the provisions of the statute, it may not be questioned on that fact alone when determining whether the particular statute enacted by Congress exceeds the powers conferred upon it by the Constitution. Congress is allowed an ample measure of discretion in determining the means to be employed in executing a power conferred upon it.⁸⁴

J. Reuben Clark distinguished between political intervention in the affairs of a foreign state, which he said was an act of war and required the specific approval of Congress, and nonpolitical intervention, which he called interposition, for the sole purpose of protecting citizens. He suggested that interposition was not an act of war.⁸⁵ He did not raise the question as to whether the consent of Congress might

not nevertheless be required because it belongs to Congress "to make rules for the government and regulation of the land and naval forces."⁸⁶ It seems clear that a naval landing to rescue citizens from a foreign government would be an act of war, and this position was adopted by Congress in an act of July 27, 1868, which instructed the President, whenever an American citizen was unjustly deprived of his liberty by a foreign government, to seek his release "by such means, not amounting to acts of war, as he may think necessary and proper"⁸⁷ This act, which is still law, forbids the President to have recourse to force against a foreign government. But a naval landing to protect citizens from rioters and brigands, a brief action narrowly confined as to object and not directed against an established government, does not seem to raise the issue of war and peace. It is a police action comparable to repelling pirates. Such a police action can be taken only under regulations enjoying Congressional sanction, but the naval regulations have enjoyed such sanction since 1862. The regulations of 1893⁸⁸ made it clear that no wider use of force was intended than that described above. Appendix A shows that on few or no occasions have naval landings had a broader purpose than the immediate relief of citizens and that on very few occasions have they occurred against the will of the local government. It is certain that Congress in 1862 did not intend to give the Secretary of the Navy the power to make war, and that the Secretary has never claimed such power.

There is still the question as to whether the broad delegation to the Secretary of the Navy of the power to make regulations, unrestricted as to the subject, does not convey impermissibly broad powers. But the delegation must be interpreted, if possible, in such a way as to save

its constitutionality. The President was given a similarly broad power in 1926 under a statute which read: "The Secretary of State may grant and issue passports ... under such rules as the President shall designate and prescribe ..."⁸⁹ In *Kent v. Dulles*,⁹⁰ in 1958, the Supreme Court held that the delegation must be interpreted to be limited to the subjects on which restrictive rules had been made in the past: the denial of passports for lack of citizenship or because they were sought in order to escape prosecution for crime or to advance criminal schemes. In *Zemel v. Rusk*,⁹¹ in 1965, the Court held that in enacting the broad language Congress had also contemplated that the President might impose restrictions as to area on the issuance of passports. Since there had been thirteen naval landings to rescue citizens before 1862, it seems fair to assume that this topic was one of those which Congress intended to authorize when it passed the act of 1862.

Indeed, restrictive interpretation of an overly broad statute, when this is possible, is standard practice. When Congress has passed regulatory statutes which in language exceeded its delegated powers, the Court has limited their meaning to the constitutionally permissible area.⁹² There seems to be no constitutional objection to the act of 1862 if it is properly interpreted.

Between 1865 and 1874 there occurred 12 landings to protect citizens.⁹³ In 1874 Congress re-enacted the 1862 statute,⁹⁴ presumably with knowledge of the administrative interpretation of the statute. When Congress thus re-enacts a statute, it adopts the established administrative interpretation.⁹⁵ Consequently, whatever meaning and whatever status the act of 1862 may have had, the Revised Statutes⁹⁶

confirmed and authorized the practice of making naval landings for the protection of citizens. It was under the Revised Statutes that the authorization was made explicit in the Navy Regulations of 1893.

Therefore, one must deduct from any list of Congressionally unauthorized acts of hostility abroad the 103 cases of naval landings for the protection of citizens since 1865. These were not grounded on any claim of executive power; whether they were legal actions or illegal, they claimed statutory authorization. And the law governing Congressional delegations seems to support the contention that they were legal actions.

What is important to note at this point is that the makers of past lists have collected their instances of United States forces being employed abroad to support the growing acceptance of expanded Presidential war-making power. They point to these instances in our history as proof and precedents that the President has always exercised such powers. However, of 209 instances only 33 actions were clearly initiated or sustained by past Presidents. The bulk of the precedents do not support the exercise of such power by the Executive; they support just the opposite conclusion. There is no clear basis in past action by the Executive to sustain the argument for expanded Presidential war-making power.

These 33 instances are divided into four categories of actions, all which must be attributed strictly to executive initiation, though one category would have not been possible to sustain without Congressional acquiescence. The United States has on 7 occasions occupied various states in the Caribbean area for protracted periods.⁹⁷ Just as the Executive was clearly responsible for committing United States forces to

these countries, it is equally clear that Congress was responsible for making it possible for the Executive to maintain military forces there once committed. Another category of purely executive action is rather minor. This grouping includes minor demonstrations or threats of force.⁹⁸ None of these actions included actual combat, though it is clear the Executive did not rule out the use of force or combat in any of these cases.

The final two categories involve the invasion of foreign or disputed territory without any type of statutory authorization by the Congress. A group of 13 instances included no combat;⁹⁹ however, it is the list of 8 actions involving combat that is of particular significance.¹⁰⁰ Of the eight, four have occurred since President Roosevelt conducted his "undeclared" naval war with Germany in 1940 - 1941.¹⁰¹ President Franklin Roosevelt's broad interpretation of Executive warpower has continued to expand to this day, prompting Arthur Schlesinger Jr. to write:

The towering figure of Franklin Roosevelt, the generally accepted wisdom of his measures of 1940-1941, his undisputed powers as Commander-in-Chief after Pearl Harbor, the thundering international agreements pronounced at wartime summits of the Big Two or the Big Three - all these factors, combined with the memory of the diplomatic congressional performance in foreign affairs during the years between the wars, gave Americans in the postwar years an exalted conception of presidential power. Moreover, Roosevelt's successor, a man much read in American history and of doughty temperament, regarded his office, in the words of his last Secretary of State, as "a sacred and temporary trust, which he was determined to pass on unimpaired by the slightest loss of power or prestige." 102

And it is this pattern of behavior that explains the event:

As the United States became the dominant world power in the twentieth century, the American ruling elite found itself legitimizing military incursions while routinizing and rationalizing the Executive's usurped

power of war-making. It whittled down the constitutional authority of Congress and systematically excluded the people from the process of making fundamental decisions on war and peace. 103

And once having excluded the people and their elected representatives from deciding when the nation will go to war, the Executive and a small group of advisors discovered that to maintain and perpetuate this power to decide war and peace they would be required now and then to deceive the people and their Congress.

Notes

¹J. Reuben Clark, Right to Protect Citizens in Foreign Countries by Landing Forces (Washington, D.C.: Government Printing Office, 1934), p. 51.

²Ibid., p. 81.

³Milton Offutt, The Protection of Citizens Abroad by the Armed Forces of the United States (Baltimore: The John Hopkins Press, 1928), p. 9.

⁴Harry Allanson Ellsworth, One Hundred Eighty Landings of United States Marines, 1800 - 1934 (Washington, D.C.: mimeographed book, 1934).

⁵U.S., Congress, Congressional Record, 77th Cong., 1st sess., Vol. 87, pt. 6 (July 10, 1941), pp. 5930 - 31.

⁶James Grafton Rogers, World Policing and the Constitution (Boston: World Peace Foundation, 1945), p. 92.

⁷Ibid., p. 79.

⁸U.S., Department of State, "Authority of the President to Repel Aggression in Korea," Department of State Bulletin, 23 (July 30, 1950), 173.

⁹Ibid., 177 - 178.

¹⁰U.S., Congress, House, Background Information on the Use of United States Armed Forces in Foreign Countries, H. Rept. 78130, 82d Cong., 1st sess., 1951.

¹¹Ibid., p. 2.

¹²Ibid., pp. 55 - 62.

¹³U.S., Congress, House, Background Information on the Use of United States Armed Forces in Foreign Countries, 91st Cong., 2d sess., House Committee on Foreign Affairs, 1970.

¹⁴U.S., Department of State, Armed Action Taken by the United States Without a Declaration of War, 1798 - 1967, Research Project No. 806 A (August, 1967).

¹⁵U.S., Congress, Congressional Record, 92d Cong., 1st sess., Vol. 117, No. 58 (April 26, 1971), pp. S5640 - 46.

¹⁶U.S., Congress, Congressional Record, Senate, 92d Cong., 2d sess., Vol. 118 (Daily eds., February 9, 1972), p. S1505.

¹⁷Ibid.

¹⁸⁴ Dall. 37 (1800). Accord, Talbot v. Seaman, 1 Cr. 1 (1801); Little v. Barreme, 2 Cr. 170 (1804).

¹⁹See Appendix A

²⁰Ibid.

²¹List by Category of 209 Instances of the Use of United States Armed Forces in Foreign Countries, 1798 - 1973.

Congressionally Authorized

(1) Declarations of General War	11
(2) Individual Actions Specifically Authorized by Congress	9
(3) Landings to Protect American Citizens and their Property after 1865	103

Not Congressionally Authorized and in Most Cases Not Initiated by the President - Independent Actions

(4) Landings to Protect American Citizens and their Property Before 1865	13
(5) Border Crossings and Landings in Pursuit of Lawbreakers	12
(6) Reprisals	16
(7) Minor Demonstrations or Threat of Force Without Combat	<u>12</u>
	53

Initiated or Sustained by the President

(8) Protracted Occupations of States in the Caribbean Area	7
(9) Actions Taken by President Franklin D. Roosevelt, 1940-41, "Undeclared War"	5
(10) Invasion of Foreign or Disputed Territory, No Statute, No Combat	13
(11) Invasion of Foreign or Disputed Territory, No Statute, Combat	<u>8</u>
	33

²²Clark, Right to Protect Citizens in Foreign Countries by Landing Forces, pp. 44 - 48.

²³Congressional Record, 77th Cong., 1st sess., Vol. 87, pt. 6 (July 10, 1941), pp. 5930 - 31.

²⁴See Appendix A for list of 5 "Actions Undertaken by President Franklin D. Roosevelt, 1940 - 1941, Grouped under "Undeclared War".

²⁵"Authority of the President to Repel Aggression in Korea," Department of State Bulletin, 23 (July 30, 1950; Department of State, Armed Actions Taken by the United States without a Declaration of War, 1798 - 1967, Research Project No. 806 A (August, 1967).

²⁶Congressional Record, 92d Cong., 1st sess., Vol. 117, No. 58 (April 26, 1971), p. 35640.

²⁷U.S., Congress, House, Congress, The President and the War Powers, Hearings, before the Subcommittee on National Security Policy and Scientific Developments of the Committee on Foreign Affairs, House of Representatives, 91st Cong., 2d sess., 1970, pp. 234 - 235.

²⁸U.S., Congress, Senate, War Powers Legislation, Hearings, before the Committee on Foreign Relations, Senate, 92d Cong., 1st sess., 1971, pp. 489 - 490.

²⁹Ibid., p. 506.

³⁰U.S., Statutes at Large, Vol. 1, pp. 112, 113-4, 1790.

³¹See Appendix A

³²Ibid.

³³American State Papers, Naval Affairs, Vol. 2, p. 652.

³⁴James D. Richardson, ed., A Compilation of the Messages and Papers of the Presidents, 1789 - 1908 (10 vols.; Washington, D.C.; Bureau of the National Literature and Art, 1908), Vol. 1, p. 258.

³⁵U.S., Statutes at Large, Vol. 9, p. 899 (December 12, 1846).

³⁶U.S., Congress, Congressional Record, 92d Cong., 1st sess., Vol. 117, No. 58 (April 26, 1971), pp. 85642 - 43.

³⁷U.S., Statutes at Large, Vol. 9, pp. 898 - 99, (December 12, 1846).

³⁸U.S., Congress, Senate, Use by the United States of a Military Force in the Internal Affairs of Colombia, et al., S. Doc. 143, 58th Cong., 2d sess., 1904, pp. 7 - 8.

³⁹Ibid.

⁴⁰See Appendix A

⁴¹See Appendix A

⁴²See Appendix A

⁴³The Exchange v. McFaddon, 7 Cr. 116 (1812), approved in Tucker v. Alexandroff, 183 U.S. 424 (1902).

⁴⁴U.S., Constitution, Art. I, sec. 8, cl. 11.

⁴⁵U.S., Constitution, Art. I, sec. 8, cl. 14.

⁴⁶6 Op. Atty Gen. 10, 14-16 (1853).

- ⁴⁷U.S., Statutes at Large, Vol. 12, pp. 561, 565 (July 14, 1862).
- ⁴⁸Regulations for the Government of the United States Navy: 1865 (Washington, D.C.: Government Printing Office, 1865).
- ⁴⁹Ibid., p. 56.
- ⁵⁰The United States Consul's Manual: A Practical Guide for Consular Officers: 1863 (Washington: Hudson Taylor, 1863).
- ⁵¹Ibid., p. 196.
- ⁵²See Appendix A
- ⁵³Ibid.
- ⁵⁴United States Consular Regulations: A Practical Guide for Consular Officers: 1868 (Washington: French and Richardson, 1868).
- ⁵⁵Ibid., p. 278.
- ⁵⁶Regulations for the Government of the United States Navy, 1870 (Washington, D.C.: Government Printing Office, 1870).
- ⁵⁷Ibid., p. 7.
- ⁵⁸See Appendix A
- ⁵⁹Ibid.
- ⁶⁰Regulations Prescribed for the Use of the Consular Service of the United States: 1874 (Washington, D.C.: Government Printing Office, 1874).
- ⁶¹Ibid., pp. 15 - 16.
- ⁶²Regulations for the Government of the Navy of the United States: 1876 (Washington, D.C.: Government Printing Office, 1876).

⁶³Regulations Prescribed for the Use of the Consular Service of the United States: 1881 (Washington, D.C.: Government Printing Office, 1881).

⁶⁴Regulations Prescribed for the Use of the Consular Service of the United States: 1888 (Washington, D.C.: Government Printing Office, 1888).

⁶⁵Regulations Prescribed for the Use of the Consular Service of the United States: 1896 (Washington, D.C.: Government Printing Office, 1896).

⁶⁶U.S., Revised Statutes, Sec. 1547 (1874).

⁶⁷U.S., Statutes at Large, Vol. 70 A, p. 375 (1956); United States Code, Vol. 10, p. 5611 (1959 ed.).

⁶⁸Regulations for the Government of the Navy of the United States: 1893 (Washington, D.C.: Government Printing Office, 1893).

⁶⁹Ibid., Articles 284 - 286, p. 67.

⁷⁰Regulations for the Government of the Navy of the United States: 1896 (Washington, D.C.: Government Printing Office, 1896).

⁷¹Regulations for the Government of the Navy of the United States: 1905 (Washington, D.C.: Government Printing Office, 1905).

⁷²United States Navy Regulations: 1920 (Washington, D.C.: Government Printing Office, 1927).

⁷³United States Navy Regulations: 1948 (Washington, D.C.: Government Printing Office, 1948).

⁷⁴See Appendix A

⁷⁵Ibid.

⁷⁶The phrase is from Justice Cardozo, concurring in United States v. A.L.A. Schechter Poultry Corp., 295 U.S. 495, 553 (1935).

- ⁷⁷Field v. Clark, 143 U.S. 649.
- ⁷⁸Wayman v. Southland, per Chief Justice Marshall, 10 Wheat. 1.
- ⁷⁹McCall's Case, 15 Fed. Cos. 1230.
- ⁸⁰Cooperville, etc., Co. v. Lemon, 163 Fed. Rep. 147.
- ⁸¹21 Op. Atty. Gen. 438, 439.
- ⁸²16 Op. Atty. Gen. 495.
- ⁸³U.S., Revised Statutes, sec. 161 (1874).
- ⁸⁴Baske v. Comingore, 177 U.S. 459.
- ⁸⁵Clark, Right to Protect Citizens in Foreign Countries by Landing Forces, pp. 38 - 40.
- ⁸⁶U.S., Constitution, Art. I, sec. 8, cl. 11.
- ⁸⁷U.S., Statutes at Large, Vol. 15, p. 223 (1868) (italics supplied); U.S. Code, Vol. 22, 1732 (1964 ed.).
- ⁸⁸Regulations for the Government of the Navy of the United States: 1893 (Washington, D.C.: Government Printing Office, 1893).
- ⁸⁹U.S., Statutes at Large, Vol. 44, p. 887 (1926); U.S. Code, Vol. 22, 211a (1964 ed.).
- ⁹⁰357 U.S. 116 (1958).
- ⁹¹381 U.S. 1 (1965).
- ⁹²The Abby Dodge v. United States, 223 U.S. 166 (1912); In re Chapman, 166 U.S. 661 (1897). In Standard Oil Co. of New Jersey v. United States, 221 U.S. 1 (1911) the Court saved the Sherman Act by limiting it by the rule of reason. And see A.A. Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935).

⁹³See Appendix A

⁹⁴U.S., Revised Statutes, sec. 1547 (1874).

⁹⁵E.G., *Zemel v. Rusk*, 381 U.S. 1 (1965); *Kent v. Dulles*, 375 U.S. 116 (1958); *Cammarano v. United States*, 358 U.S. 498 (1959); *Commissioner of Internal Revenue v. Flowers*, 326 U.S. 465 (1946); *Helvering v. Winnill*, 305 U.S. 79 (1938); *Massachusetts Mutual Life Ins. Co. v. United States*, 288 U.S. 269 (1933). In *United States v. Midwest Oil Co.*, 236 U.S. 459 (1915), the Court held that a persistent administrative practice which Congress had tolerated over a long period of years had gained implied Congressional authorization.

⁹⁶U.S., Revised Statutes, sec. 1547 (1874).

⁹⁷See Appendix A

⁹⁸Ibid.

⁹⁹Ibid.

¹⁰⁰Ibid.

¹⁰¹1950-1953, Korea; 1964-1973, Vietnam; 1965, Dominican Republic; 1970, Cambodia.

¹⁰²Arthur Schlesinger, Jr., "Congress and the Making of American Foreign Policy," Foreign Affairs, 51 (October, 1972), 94.

¹⁰³Ralph Stavins, Washington Plans an Aggressive War (New York: Vintage Books, 1971), p. 255.

CHAPTER II

ROOSEVELT AND THE UNDECLARED WAR:

A CASE STUDY IN MEASURED DECEPTION

Introduction

Franklin Roosevelt repeatedly deceived the American people during the period before Pearl Harbor ... If he was going to induce the people to move at all, he would have to trick them into acting for their best interests, or what he conceived to be their best interests ...

A president who cannot entrust the people with the truth betrays a certain lack of faith in the tenets of democracy. But because the masses are notoriously shortsighted, and generally cannot see danger until it is at their throats, our statesmen are forced to deceive them into an awareness of their own long-run interests. This is clearly what Roosevelt had to do, and who shall say that posterity will not thank him for it? 1

Thomas A. Bailey-1948

... American involvement in war with Germany was preceded by a series of steps, not one of which could reasonably be represented as conducive to the achievement of the President's professed ideal of keeping the United States out of foreign wars ...

... No convinced believer in American nonintervention in wars outside this hemisphere could have given the American people more specific promises than Roosevelt gave during the campaign of 1940. And it is hard to see how any President, given the constitutional limitations of the office, could have done more to precipitate the United States into war with Germany and Japan than Roosevelt accomplished during the fifteen months between the destroyer-for-bases deal and the attack on Pearl Harbor. 2

William Henry Chamberlin-1950

... Roosevelt was the prisoner of his own policies. He had told the nation time and time again that it

was not necessary for the United States to enter the war. He had propounded the doctrine that America could achieve Hitler's downfall simply by giving all-out aid to England. He had repeatedly denied that his measures would lead the nation into war. In essence, he had foreclosed to himself the possibility of going directly to the people and bluntly stating that the United States must enter the war as the only way to guarantee the nation's security. All he could do was edge the country closer and closer, leaving the ultimate decision to Germany and Japan. 3

Robert A. Divine-1969

It is no easy matter to reach a sound position regarding President Franklin D. Roosevelt's possible duplicity in the events leading to World War II. There exists one set of facts about which hundreds of opinions have been written, all designed to present the definitive interpretation, and therefore the final answer to President Roosevelt's actions. But it is possible to present the facts, statements, and opinions; and despite the absence of any statement of intent by Roosevelt, a discernible pattern of deception that led to war can be developed. Whether or not this deception was intended by Roosevelt to involve the nation in war is not what is important; it did, in fact, lead to war.

The policy pursued by President Roosevelt to be here examined consists of eight well-defined steps, each serving to further American participation and involvement in the struggle for British survival.

1. The exchange of American destroyers for British bases in the Caribbean and in Newfoundland in September, 1940.
2. The enactment of the Lend Lease Act in March, 1941.
3. The secret talks of American and British military staffs in Washington from January to March, 1941. These talks produced a number of contingency plans regarding American participation in the war in Europe.

4. The initiation of naval patrols to report the presence of German submarines to British warships in the Atlantic in April, 1941.

5. The dispatch of American marines to Iceland in July, 1941 as part of the Hemispheric Defense System.

6. The Atlantic Conference of Roosevelt and Churchill from August 9 to 12, 1941.

7. The orders formally issued on September 11, 1941 to American warships to "shoot on sight" German submarines.

8. The authorization to arm American merchant ships and dispatch these ships into war zones in November, 1941.

Prior to taking these steps, President Roosevelt, in the 1930's, pursued an isolationist policy toward the totalitarian threat from Germany, Italy, and Japan. The President accepted a series of isolationist neutrality laws enacted by Congress, objecting only to those provisions which were clearly inconsistent with Executive prerogative. He accepted Italy's conquest of Ethiopia and Japan's invasion of China, and acquiesced in Germany's seizure of Austria and the Sudetenland in Czechoslovakia. The President never made his isolationist views plainer than in August, 1936, on the occasion of his renomination for the Presidency by the Democratic Party:

I have seen war. I have seen war on land and sea. I have seen blood running from the wounded. I have seen men coughing out their gassed lungs. I have seen the dead in the mud. I have seen cities destroyed. I have seen two hundred limping, exhausted men come out of line - the survivors of a regiment of one thousand that went forward forty-eight hours before. I have seen children starving. I have seen the agony of mothers and wives. I hate war.

I have passed unnumbered hours, I shall pass unnumbered hours, thinking and planning how war can be kept from this nation. 4

The war in China prompted the first shift in President Roosevelt's thinking regarding the role America was to play in the world. In a speech in Chicago on October 5, 1937, later termed the "Quarantine Address," the President significantly commented on aggression overseas: "If those things come to pass in other parts of the world, let no one imagine that America will escape, that it may expect mercy, that this Western Hemisphere will not be attacked, and that it will continue tranquilly and peacefully to carry on the ethics and the arts of civilization." He then likened war to a contagion: "When an epidemic of physical disease starts to spread, the community approves and joins in a quarantine of the patients in order to protect the health of the community against the spread of the disease." He did, however, end with a reaffirmation of his Chautauqua address: "America hates war. American hopes for peace. Therefore, America actively engages in the search for peace."⁵

The Munich Conference in September, 1938, and Hitler's subsequent seizure of Czechoslovakia, led President Roosevelt to the increased realization "that appeasement had served only to postpone, not to prevent, a major European war."⁶ The President's annual message to Congress in 1939 was interpreted by many as a call for revision of the existing neutrality legislation and, in particular, the arms embargo. Roosevelt's own decision and procrastination over this matter resulted in prolonged debates and, in June, his defeat in the House. However, in November, 1939 the administration succeeded in convincing the Congress to pass legislation that would in the future enable France and Great Britain to "purchase from the United States anything they needed for their war effort, including guns, tanks, and airplanes, provided only that they

pay cash and carried away these supplies in their own ships."⁷

Finally, in a speech presented to the graduates of the University of Virginia in Charlottesville on June 10, 1940, President Roosevelt dramatically set forth his developing policy. With this speech the President ended America's status as a neutral,⁸ committed the United States "to the assumption of responsibility for nothing less than the leadership of the world,"⁹ and put into effect the policy of "all out aid to the democracies."¹⁰

Perception of danger to our institution may come slowly or it may come with a rush and a shock as it has come to the people of the United States in the past few months. This perception of danger has come to us clearly and overwhelmingly; and we perceive the peril in a world-wide arena - an arena that may become so narrowed that only the Americas will retain the ancient faiths.

Some indeed still hold to the now somewhat obvious delusion that we of the United States can safely permit the United States to become a lone island, a lone island in a world dominated by the philosophy of force.

Such an island may be the dream of those who still talk and vote as isolationists. Such an island represents to me and to the overwhelming majority of Americans today a helpless nightmare of people without freedom - the nightmare of people lodged in prison, handcuffed, hungry, and fed through the bars from day to day by the contemptuous, impitoying masters of other continents ...

On this tenth day of June, 1940, in this University founded by the first great American teacher of democracy, we send forth our prayers and hopes to those beyond the seas who are maintaining with magnificent valor their battle for freedom.

In our American unity, we will pursue two obvious and simultaneous courses; we will extend to the opponents of force the material resources of this nation; and, at the same time, we will harness and speed up the use of those resources in order that we ourselves in the Americas may have equipment and training equal to the task of any emergency and every defense.

All roads leading to the accomplishment of these objectives must be kept clear of obstructions. We

will not slow down or detour. Signs and signals
call for speed - full speed ahead. 11

The Destroyer for Bases Deal

With the surrender of the French to Germany on June 17, 1940, the British were left to fight alone against Germany. Having sensed the impending fall of France, Churchill, just five days after he had replaced Neville Chamberlain as Prime Minister of England, on May 15, 1940, had set into motion his vigorous campaign to draw the United States into war with Germany by the first of a steady stream of messages requesting the aid of President Franklin D. Roosevelt. Churchill dramatically described the situation in Europe as a "scene which has darkened swiftly" where "the small countries are smashed up, one by one, like matchwood." He went on to express England's determination to "if necessary ... continue the war alone," but emphasized the grave outcome for Europe if Britain did not immediately receive extensive aid from the United States.

But I trust you realize, Mr. President, that the voice and force of the United States may count for nothing if they are withheld too long. You may have a completely Nazified Europe established with astonishing swiftness, and the weight may be more than we can bear. All I ask now is that you should proclaim non-belligerency, which would mean that you would help us with everything short of actually engaging armed forces. Immediate needs are: First of all, the loan of forty or fifty of your older destroyers to bridge the gap between what we have now and the large new construction we put in hand at the beginning of the war. This time next year we shall have plenty. But if in the interval Italy comes in against us with another one hundred submarines, we may be strained to the breaking point ... 12

Frederick R. Sanborn implies, that as a result of Churchill's request, "the very next day, May 16, Mr. Roosevelt asked the Congress

for additional appropriations 'for National Defense.'"¹³ However, it would hardly seem logical that overnight President Roosevelt prepared a major message to Congress requesting an additional \$896 million for National Defense.¹⁴ Sanborn goes on to state that on 17 May, President Roosevelt ordered all those destroyers not already recommissioned into service.¹⁵ President Roosevelt, replying to a question at a press conference as to what he planned to do with the additional appropriation for National Defense that he had requested from Congress the day before, stated:

As I said before, probably the bulk will go to the increase for production of planes and for anti-aircraft guns and ammunition to go with them, over and above the amounts that are carried in the other appropriations. Then, of course, it should be perfectly obvious that there are a great many things that you cannot foresee at the present time and put down in a line item. Well, I will give you an illustration: this particular thing happens to be up today, but suppose, for the sake of argument, it had not come up until after the Congress had adjourned--there would be no money to carry it out. It is under discussion at the present time to commission destroyers, thirty-five of the old World War destroyers, which are still out of commission; all the rest of them have been put into commission. Some of the thirty-five, maybe all of them, may, for national defense reasons, have to be commissioned. Of course it costs a good deal of money to put a ship that has been out of commission a great many years, especially a priority III ship which is a ship that has been longest out of commission, into full commission. Now as I say, it so happens that this is coming up at the present time while Congress is here, but suppose the question, the problem, had not come up until after Congress had adjourned? I would not want to call Congress back into session to give me six million dollars to put these thirty-five destroyers into full commission. I ought to have some leeway to do a thing of that kind. 16

These two events, whether coincidental or not to Prime Minister Churchill's urgent plea for aid on May 15, prompted Sanborn to conclude that they constituted President Roosevelt's "first step toward the destroyer deal."¹⁷

Prime Minister Churchill received a reply from President Roosevelt on May 18, saying that the loan or gift of forty or fifty destroyers would require Congressional authorization which presently would be unwise to request.¹⁸ On June 4 President Roosevelt reiterated his conviction that the sale of destroyers to Great Britain would necessitate an act of Congress. During a luncheon with President Roosevelt on that date, Secretary of the Interior Harold Ickes asked him "whether anything could be done to sell some of our obsolete airplanes and destroyers to England and France."¹⁹ President Roosevelt replied that obsolete destroyers carrying only four guns apiece and lacking anti-aircraft guns were of no use to anyone, and "moreover, it would require an act of Congress to permit the sale of any of these destroyers even indirectly."²⁰ President Roosevelt further strengthened what was looming on the horizon as deception when he expressed to Secretary Ickes that some day, "if we should send some destroyers across, they would be of no particular use to the Allies but they might serve to further enrage Hitler. We cannot tell the turn that the war will take, and there is no use endangering ourselves unless we can achieve some results for the Allies."²¹

Prior to this conversation, on June 1, President Roosevelt had ordered the Army and Navy to determine the quantity of arms that could be transferred to Britain. In response, on June 5 General Marshall had authorized the transfer of 500,000 rifles, 80,000 machine guns, 900 field guns, and assorted types of other weaponry.²² On June 5, Attorney General Robert H. Jackson, in an opinion rendered to the President on this subject, stated that 600,000 rifles and 2,500 field guns with ammunition could be sold to Great Britain as "surplus."²³ This opinion was based on traditional norms of neutrality, which prohibited

any neutral government from furnishing a belligerent with arms. Instead, what the United States government did was to trade with manufacturers "old equipment, particularly planes, for new equipment; or "surplus" guns were sold outright to private companies. The private companies then sold planes, guns and other material to Britain."²⁴ This policy was given a shroud of legality when on June 10 Senator Sheppard introduced an amendment to a pending defense bill, proposing that the War Department be authorized in the future to trade unserviceable or surplus items for materials which were determined to be in short supply.²⁵ Senator Clark of Missouri, stated the real purpose of the amendment to be "an evasion of international law and of the Neutrality Act."²⁶ The amendment, however, was adopted by a clear majority and became law on July 2, 1940.

The body of international law regarding a transfer of war vessels was considerably more strict than that dealing with war materiel. When in June, 1940 the Navy Department planned to trade in to manufacturers motor torpedo boats and submarine chasers still uncommissioned, for future sale to Britain, President Roosevelt once again asked Attorney General Jackson for an opinion.²⁷ This time Jackson rendered an opinion based on a 1917 statute embodying international law, prohibiting the transfer of any warship, constructed with intent or by agreement, to a belligerent.²⁸ At this time, Senator David I. Walsh was sponsoring legislation prohibiting any "limitation or reduction in the size of our Navy."²⁹ Senator Walsh's intent provided the basic element of the Act of June 28, 1940, which declared that only those warships that the Chief of Naval Operations certified as "not essential to the defense of the United States"³⁰ could be released for sale to a belligerent. This

legislation, for the moment, restrained President Roosevelt from any further consideration of Churchill's plea, for Admiral Stark had expressed his belief that in view of the French surrender, a naval crisis had been precipitated which rendered all United States warships essential and valuable.³¹

In spite of seemingly having reached an impasse, several cabinet officers continued to apply pressure to President Roosevelt. Henry Morgenthau and two Republicans just recently appointed by the President—Secretary of War Henry Stimson and Secretary of the Navy Frank Knox—failed to convince President Roosevelt to sell the destroyers to Britain.³² Secretary Stimson was, in fact, unyielding in his argument that there was no need to consult Congress; action taken regarding the destroyers fell within the traditional power of the Executive in foreign affairs. Furthermore, Admiral Stark, once having redetermined what naval strength was essential to the defense of the United States, could clear his conscience, thereby meeting the requirements of the Act of June 28. Stimson also argued strongly against a State Department view that any agreement reached with Britain regarding the destroyers should contain an assurance that the British Fleet would not be surrendered.³³ Apart from legislation preventing the President from making the sale, President Roosevelt, it is thought, hesitated taking any action for just this reason—the fear that the British Fleet was subject to surrender or to destruction by Germany.³⁴ According to Secretary Ickes, this factor had been disturbing President Roosevelt for some time:

Major Brook Lee came in to see me about his anxiety as to what might happen to the British Fleet in the event of a German victory over England. He gave me a memorandum which he had written out reciting that nothing would be safe in America if Hitler could force the surrender of the British Fleet. With the

combined German, English and French Fleets in the Atlantic and the Japanese Fleet in the Pacific, we could be in real jeopardy. He thinks we ought to do something to assure ourselves control of the British capital ships, and his proposal was that we enter into an agreement with England to give us its capital ships in return for three to five thousand more planes immediately. His point was that England could not survive without this number of additional planes at once, and that we could probably not survive in the end unless we had the two-oceans Navy that we would have if we were in possession of British capital ships.

Subsequently I showed this to the President and he said that it was right. He did not believe, however, that England would be willing to give us her ships; nor have we the necessary number of planes to trade for them.

It was evident that the President had been doing some worrying about this matter. He said: 'Suppose Hitler says to England, "I will give you the most generous terms that a victor has ever offered to a conquered people. You may keep control of the British Isles (without any commitments as to colonies or independent dominions), but you made us destroy our fleet after the last war and now you must replace that fleet by surrendering yours. If you do not do this, we will move into England, take it over, and run it with Germans in every county." In such a situation what would England do?' 35

Evidently the same fear gripped the other side of the ocean, as evidenced by a letter from Churchill to Mr. Mackenzie King on June 24, 1940:

I have good confidence in our ability to defend this island, and I see no reason to make preparations for or give any countenance to the transfer of the British Fleet. I shall myself never enter into any peace negotiations with Hitler, but obviously I cannot bind a future government which, if we were deserted by the United States and beaten down here, might very easily be a kind of Quisling affair ready to accept German overlordship and protection. It would be a help if you would impress this danger upon the President, as I have done in my telegrams to him. 36

Four days later, in a letter to Lord Lothian, the British Ambassador to Washington, Churchill emphasized that his thoughts communicated to King on June 24 must be thoroughly explained to and understood by

President Roosevelt:

Never cease to impress on President and others that, if this country were successfully invaded and largely occupied after heavy fighting, some Quisling Government would be formed to make peace on the basis of our becoming a German Protectorate. In this case the British Fleet would be the solid contribution with which the Peace Government would buy terms. 37

President Roosevelt's dilemma at this point is evident: if he sold the destroyers to Britain, they might be surrendered to Germany; if he did not sell any destroyers to Britain, this factor alone might very well contribute to the British Fleet's surrender.

In the meantime, influential leaders of the Committee to Defend America by Aiding the Allies and the Century Group became especially active in the effort to discover a legal solution that would allow the sale of the destroyers to England. Joseph Alsop prevailed upon Benjamin Cohen, one of the most able lawyers working for the Roosevelt administration, to use his influence with the White House.³⁸ In response to Alsop's request, Cohen on July 19, 1940 sent a memorandum to President Roosevelt arguing that he had the authority to transfer the destroyers to Britain without consulting Congress:

I am sending you a memorandum which I have prepared which I think shows that there is no legal barrier, by reason of our own statutes or the law of nations, which would stand in the way of the release of our old destroyers from our naval service and their sale to the British - if their release for such purposes would, as at least some naval authorities believe, strengthen rather than weaken the defense position of the United States.

The recent opinion of the Attorney General disapproving the transfer to the British of torpedo boats in the course of construction may be distinguished on sound technical grounds, as is explained in the attached memorandum.

I appreciate even if Congressional approval is not required, Congressional opinion would have to be taken into account!

Possibly any unfavorable Congressional reaction could be avoided or at least minimized, and the advantages from the point of view of national defense made clearer, if the British agreed as a condition to such release that the destroyers, and possibly certain other British ships, could be assigned and placed under the control of the Canadian government. Such arrangement might tend to assure that such ships if not destroyed would be available for the defense of the Western Hemisphere if Britain lost the war. 39

If, in fact, Cohen's argument that release of the destroyers by the British to Canadian control would strengthen Western Hemispheric strength could be proven, the provision of the Act of June 28 would be satisfied. As for Attorney General Jackson's opinion based on what intention or agreement leads a nation to construct a warship, it would certainly not apply in the case of the destroyers since they were not built to serve the needs of a belligerent in the war. In any event, President Roosevelt considered the argument important enough to send the memorandum on to Secretary Knox with this comment:

In view of the clause in the big authorization bill I signed last Saturday, which is intended to be a complete prohibition of sale, I frankly doubt if Cohen's memorandum would stand up.

Also I fear Congress is in no mood at the present time to allow any form of sale.

You might, however, think over the possibility at a later date of trying to get Congressional action to allow the sale of these destroyers to Canada on condition that they be used solely in American Hemisphere defense, i.e., from Greenland to British Guiana including Bermuda and the West Indies. It is obvious that this would be of great assistance, as it would release other ships for other purposes and would relieve the United States of a part of the responsibility for maintaining our present control. 40

On May 24, 1940, Lord Lothian had sent a cable from Washington to the British Cabinet suggesting that the British Government make a formal offer to lease to the United States landing grounds and base

facilities in such British territories as Trinidad, Newfoundland and Bermuda. Though the British Chiefs of Staff strongly recommended this course of action as benefitting both countries, Lord Lothian's recommendation was shelved by the British Cabinet. Their reaction largely reflected their growing concern for an answer to the question: Where were the American destroyers?⁴¹ Lord Lothian found a sympathetic ear for his proposal in the person of Secretary of the Navy Knox, and when he linked the possibility of the bases with the transfer of the destroyers, Knox became an enthusiastic advocate of the idea:

Frank Knox wanted to get the Caribbean bases for his country. Lord Lothian wanted to give them. Lord Lothian wanted the American destroyers for his country. Frank Knox wanted to give them. When Lord Lothian and Frank Knox first met in mid-July it was clear that their discussion of the destroyers transfer need only deal with the means. They were already agreed on the ends.

The Foreign Office discussion to press for a reversal, in mid-July of the British Cabinet's earlier rejection of the proposal to grant the base sites in the West Indies to America came after this meeting with Frank Knox. 42

The President remained to be convinced. Momentum was added to the movement by the influential Century Group. On July 25, 1940, they went on record in a memorandum favoring the release of one hundred destroyers to Britain, in return for which they proposed,

That the United States should ask for some guarantee that the British Fleet should neither be scuttled nor surrendered but in case of a successful German invasion of England, should operate thereafter from Canadian and/or American bases, or that these destroyers should be offered to Britain in exchange for immediate naval and air concessions in British possessions in the Western Hemisphere. 43

Encouraged by reports of progress from Lord Lothian regarding the position taken both by Secretary Knox and the Century Group, Churchill, in

his most eloquent plea yet to the President, summed up the situation in respect to the war in these terms:

We could not sustain the present rate of casualties for long and if we cannot get a substantial reinforcement the whole fate of the war may be decided by this minor and easily remediable factor.

This is a frank account of our present situation, and I am confident, now that you know exactly how we stand, that you will leave nothing undone to insure that fifty or sixty of your oldest destroyers are sent to me at once ... Mr. President, with great respect I must tell you that in the long history of the world, this is a thing to do now. 44

On August 1, three members of the Century Group—Clark Eichelberger, Herbert Agar and Ward Cheney—presented to President Roosevelt the substance of their July 25 memorandum. "The President listened attentively, but said little and was quite noncommittal. He left his visitors the impression that he was much preoccupied by the political obstacles to the plan."⁴⁵

During the evening of August 1, Lord Lothian and Secretary Knox met to discuss tying together a transfer of destroyers with the acquisition of British-leased air and sea bases. They concluded that it was time to act, and Secretary Knox agreed to raise the question at the cabinet meeting scheduled for the following morning.⁴⁶ Secretary Ickes recounts the events of that cabinet meeting in the following manner:

Frank Knox brought up at a cabinet meeting the question of selling some of our destroyers to England. I was glad to discover that the President and Cabinet generally were much more sympathetic to the proposition of sending some of these destroyers to England if possible. Even Hull was in favor of doing something ...

As sentiment was discussed at the Cabinet it was clear that there were two things that we ought to ask for. First, that the British Fleet be sent over here if Great Britain could not beat the Germans, and second, that we be given the right to use Britain's naval bases in our Atlantic Coast ...

The feeling was that one preoccupying thought on the Hill is what may happen to the British Navy. If we could go up with a bill frankly saying that we were going to sell fifty reconditioned destroyers in consideration of the possible coming over here of the British Navy, and of the granting of basing rights in British naval bases we should be submitting a proposition that might have pretty general support. 47

The President's own feeling regarding the legislation necessary to carry out a transfer of destroyers to Britain, its likelihood of being successful, and the best way to approach the problem, is related by the President himself in his own personal record of the meeting:

At a Cabinet meeting, in afternoon long discussion in regard to devising ways and means to sell directly or indirectly fifty or sixty World War old destroyers to Great Britain. It was the general opinion, without any dissenting voice, that the survival of the British Isles under German attack might very well possibly depend on their getting these destroyers. It was agreed that legislation to accomplish this is necessary. It was agreed that such legislation, if asked for by me without any preliminaries, would meet with defeat or interminable delay in reaching a vote ...

It was agreed that I would call up William Allen White, who has recently talked with Willkie on this subject; ask White to come to Washington at once to see Hull, Knox and Stimson and after that to see me; then returning to see Willkie and seek to get, with Willkie's approval, the support of Joe Martin and Charlie McNary for such a plan. It was agreed that if this procedure went through successfully, that I would, at once, send a definite request to the Congress for the necessary legislation. 48

Through White acting as an intermediary, President Roosevelt learned that, while Willkie was unwilling actively to seek Republican Congressional support for the destroyer transfer, he had agreed not to turn it into a campaign issue. 49

The Century Group continued actively to line up public opinion behind the President's efforts to conclude a transfer of destroyers for bases with Great Britain. They convinced the still immensely

influential General Pershing to appeal to the country in a radio address. The speech, designed to inform the American people that the danger in a British defeat was the real possibility that the war would move across the Atlantic, was received with the intended impact. Having remained aloof from partisan politics, the General's words rang out in defense of the ideals of the American people:

By sending help to the British we can still hope with confidence to keep the war on the other side of the Atlantic Ocean, where the enemies of liberty, if possible, should be defeated ... I say to you solemnly that today may be forever too late to keep war from the Americas. Today may be the last time when, by measures short of war, we can still prevent war ... We have an immense reserve of destroyers left over from the other war ... If there is anything we can do to help save the British Fleet ... we shall be failing in our duty to America if we do not do it. 50

This speech prompted Senator Pepper to introduce a resolution in the Senate authorizing the sale of the destroyers; however, though the projected transfer enjoyed wide but quiet sympathy within the Senate, few influential leaders were willing to go on record concerning a controversial subject during an election year.⁵¹

Meanwhile, in Washington, at Felix Frankfurter's suggestion, Ben Cohen and Dean Acheson had collaborated to draft an opinion which held that the Executive possessed the power to sell the destroyers to Britain in spite of the laws of June 15, 1917 and of June 28, 1940. Approving the opinion and signing it with Dean Acheson were Mr. Charles C. Burlingham, Mr. Thomas D. Thacher, and Mr. George Rublee. All were prominent American lawyers at the time. Also approving the opinion, but because of professional relationships unable to sign it, were Mr. Allen Dulles and Mr. Frank Polk. John Foster Dulles was also among those who agreed with the opinion but was unable to sign it. Lastly, Ben Cohen, an

employee of the Federal Government who had played a controversial part in the effort to "pack" the Supreme Court, felt it wiser not to sign the draft.⁵² The draft carefully analyzed the laws of June 15, 1917 and of June 28, 1940. By demonstrating that the transfer of destroyers to Great Britain did not violate the existing legal framework, the opinion concluded that no amendment of the laws was necessary. It therefore argued that the Executive was empowered to act on his own authority and responsibility and to avoid congressional delay should do so immediately.⁵³ It should be carefully noted here that,

Before the publication of the Burlingham, Thacher, Acheson, Rublee letter, no one at the highest level in Washington seems to have contemplated the possibility of bypassing Congress. After its publication, unilateral action was, for the first time, contemplated. This legal opinion must rank as one of the most important letters to the editor ever published. ⁵⁴

On August 13, President Roosevelt made his final decision. With the aid of his advisors, he drafted a cable to Churchill proposing the transfer of fifty destroyers for eight bases. That same day, still hesitant to take any "steps without Congressional approval, the President instructed Attorney General Jackson to prepare an opinion regarding the law covering the subject. Also, on that same day, Senator Walsh in a radio address declared, "The transfer of naval destroyers from our flag to the British flag, no matter by what method or device, makes mockery of our declared policy of neutrality and non-intervention. It is an act of belligerency and of war."⁵⁵

On August 16, during a press conference, President Roosevelt informed the nation that he was negotiating with the British Government to acquire naval and air bases in British territories, but maintained these negotiations were not linked to the transference of destroyers to Great Britain:

One can understand his desire to underline the prospective American gains, but in view of the sentiment of the country with regard to the destroyers, it is hard to believe that it was necessary purposely to mislead the public as the President did on this occasion.

The Analysis of Newspaper Opinions, August 10, 17, 24, 1940, revealed that strong sentiment in favor of turning over the destroyers and widespread support for any arrangement that would secure bases for the United States. 56

The remaining problems were solved and the details finalized during the following two weeks. One large hurdle was cleared in the President's mind when on August 21, in a meeting with Attorney General Jackson and Messrs. Stimson, Knox, Jackson and Sumner Welles, Admiral Stark was able to certify that the destroyers were not essential to the defense of the United States since the acquisition of strategic air and naval bases strengthened the total defense of the United States.⁵⁷ In addition, when Churchill had insisted that the bases be considered gifts, Roosevelt had objected but finally agreed that two would be gifts and the remaining six would be a quid pro quo for the destroyers. Finally, there remained Attorney General Jackson's opinion. The first half merely says that the President may acquire bases without a treaty if the United States incurs no legal obligation. It rests on the Commander-in-Chief clause of the Constitution and also unnamed "ample statutory authority."⁵⁸ The second half purports to rely exclusively on statute; the President may sell ships by the Act of 1883,⁵⁹ reinforced by the Act of 1940,⁶⁰ which was intended as a limitation rather than an authorization. But the halves of the argument do not fit. If this is an executive agreement for the sale of ships, the United States does incur a legal obligation in return for the bases, the delivery of the destroyers. But the statute permits delivery only by sale or agreement. In this

case, the justification for acquiring the bases without employing the treaty form disappears, for Jackson says the treaty form must be used if an obligation is incurred. This was presumably the reason for the insistence before the agreement was made, that the two transactions were unrelated.

On September 3, 1940, President Roosevelt made public the results of negotiations with Britain in a message to Congress. The President was careful to emphasize the advantages gained the United States in the acquisition of strategic air and naval bases; he was equally careful to de-emphasize the role of the destroyers in the bargain. However, on September 3, President Roosevelt's mood could not be affected by possible repercussions in Washington and around the world. The negotiations were completed with the resulting bargain a "fait accompli", and the President made no attempt to conceal his good humor and satisfaction from the correspondents present at his press conference of that day.⁶¹ Prime Minister Churchill, in turn, on September 5 made no attempt to conceal his satisfaction when he addressed the House of Commons:

The memorable transactions between Great Britain and the United States, which were foreshadowed when I last addressed the House, have now been completed ...

I have no doubt that Herr Hitler will not like this transference of destroyers, and I have no doubt that he will pay the United States out, if he ever gets the chance. That is why I am very glad that the army, naval and air frontiers of the United States have been advanced along a wide arc into the Atlantic Ocean and that this will enable them to take danger by the throat while it is still hundreds of miles away from their homeland ...

There will be no delay in bringing the American destroyers into active service; in fact, British crews are already meeting them at the various ports where they are being delivered. You might call it the long arm of coincidence ... This is not the appropriate

occasion for rhetoric. Perhaps I may, however, very respectfully, offer this counsel to the House: When you have got a thing where you want it, it is a good thing to leave it where it is. 62

There was little effort in Congress to question or criticize President Roosevelt's use of an executive agreement as the instrumentality to wholly bypass legislative action, since the terms of the agreement were so favorable to the United States, as the public had rapidly and ably discerned. As one unnamed Senator aptly put it:

Listen, you can't attack a deal like that. If you jump on the destroyers transfer, you're jumping on the acquisition of defense bases in the Western Hemisphere. And the voters wouldn't stand for that. Roosevelt outsmarted all of us when he tied up the two deals. 63

However, not every opinion was satisfied to allow President Roosevelt to escape unscathed. At the extreme was the headline and accompanying story in the St. Louis Dispatch which was published as a full page advertisement in the New York Times on September 7, 1940:

Dictator Roosevelt Commits an Act of War

Mr. Roosevelt today committed an act of war. He also became America's first dictator. Secretly, his Secretary of State Mr. Hull entered into an agreement with the British Ambassador that amounts to a military and naval alliance with Great Britain ... The President has passed down an edict that compares with the edicts forced down the throats of Germans, Italians, and Russians by Hitler, Mussolini, and Stalin. He hands down an edict that may eventually result in the shedding of the blood of millions of Americans; that may result in transforming the United States into a goose-stepping regimented slave-state ... Of all sucker real estate deals in history, this is the worst, and the President of the United States is the sucker. 64

One of the primary questions to arise from the bargain concerned itself with the possible violation of international law and the probable compromise of American neutrality. Though the Attorney General had carefully avoided this question, the press quickly called attention

to Article VI of the Hague Convention (1907), of which the United States was among the signatories: "The supply in any manner, directly or indirectly, by a neutral power to a belligerent power of warships, ammunition, or war materials of any kind whatever is forbidden." The State Department, however, was equally quick to observe that Article XXVIII of the same Hague Convention specified that "the provisions of this present convention do not apply except to the contracting powers and then only if the belligerents are parties to the convention." Britain had never signed the convention, and therefore this fact permitted the United States to ignore the provisions of the convention in this case. Though this argument served as the official legal justification by the State Department for this action, the real attitude of the government was expressed by the State Department with the following statement: "When the world is almost literally on fire, defense considerations must come first."⁶⁵

Considering the constitutional aspect of President Roosevelt's action, Edward Corwin summed it up this way:

Although the transaction was directly violative of at least two statutes and represented an exercise by the President of a power that by the Constitution is specifically assigned to Congress, it was defended by Attorney General Jackson, later Justice Jackson, as resting on the power of the President as Commander-in-Chief to 'dispose' the armed forces of the United States, which was ingeniously, if not quite ingenuously, construed as the power to dispose of them. ⁶⁶

The President never did ask Congress to ratify this act, but when Congress appropriated the money necessary to build the bases on its newly acquired sites, and when later Congress enacted the Lend Lease Act, it gave tacit approval to the President's action, thereby in effect ratifying the negotiated bargain.

President Roosevelt approached every facet of the destroyers-for-bases question with extreme caution. Although on June 10, 1940, he declared in his commencement day address at the University of Virginia that "we will extend to the opponents of force the material resources of this nation,"⁶⁷ he postponed granting Churchill's desperate request for nearly four months. It was not until interventionists had been able to establish strong public support, Wendell Willkie had agreed not to make the negotiations a political issue, his legal advisors had devised a method to bypass Congress, and most importantly not until the President himself was convinced that the bargain could be disguised as a measure to enhance the nation's defenses, that the President decided to act. "What may have appeared on the surface to be a bold and courageous act by the President was in reality a carefully calculated and virtually foolproof maneuver."⁶⁸

The key to Roosevelt's decision rested upon his justification of the act as a strengthening of United States defenses. But against whom would a true neutral find it necessary to strengthen his defensive capabilities? And does a true neutral pay a belligerent for this defense with weapons? Langer and Gleason describe the destroyer deal as "a milestone in the development of American policy. The United States had obviously abandoned neutrality and, though Americans refused to recognize this new-fangled Fascist term 'non-belligerency,' had entered upon a status of 'limited war'."⁶⁹ Finally, the man who in the first place requested the destroyers from the United States, described the transaction as "a decidedly unneutral act by the United States. It would, according to all standards of history, have justified the German Government in declaring war upon them."⁷⁰

Lend Lease

After successful conclusion of a strenuous campaign resulting in his re-election to a third term in November 1940, President Roosevelt on December 3 boarded the Cruiser Tuscaloosa for a ten day cruise through the Caribbean that was to be devoted to rest and relaxation. Prime Minister Churchill was once again to interrupt the peaceful reveries being enjoyed by the President aboard the Tuscaloosa and present him with a dilemma that for the next two weeks was to thrust him deep into the troubled thoughts shared by the common burden of leadership. Churchill wrote Roosevelt, on December 8, 1940, a letter in excess of 4000 words covering in detail the British war prospects for the year 1941. Churchill spoke now with more confidence, understanding better the limits within which the United States President could act, but also knowing full well the meaning of Roosevelt's election to a third term. Tying the survival of American democracy to the survival and independence of the British Commonwealth, Churchill declared it "British duty in the common interest, as also for our own survival, to hold the front and grapple with the Nazi power until the preparations of the United States are complete."⁷¹ This, according to Churchill would require at least two years. In the meantime, while the United States was converting its industries to war production, it could aid Britain in one of two ways:

First, reassertion by the United States of the freedom on the seas so that, with repeal of the limiting clause of the Neutrality Act, and in accordance with German agreement to the principle in 1935, United States ships would carry cargoes to Britain; protection of this shipping by warships and planes, which might lead to incidents but not to a declared war by Germany because Hitler followed the maxim 'one at a time', feared making the mistake of the Kaiser in the First War, and

wished to avoid war with the United States until Great Britain was reduced. Second, failing the above measures, Churchill proposed a gift, loan or supply of American sea control to the approaches of the new American bases on British territory, and American diplomatic aid to induce the government of Eire to give Britain use of Irish bases. To insure victory, Britain needed three million additional tons of shipping which only the United States could supply, and reinforcement of her ability to manufacture aircraft as well as a further quota of American planes of two thousand per month, including maximum numbers of heavy bombers on which Churchill relied to shatter Nazi power in Europe. American machine tools for munitions were needed. 72

But Churchill was not finished. He saved the best for last:

17. Last of all, I come to the question of Finance. The more rapid and abundant the flow of munitions and ships which you are able to send us, the sooner will our dollar credits be exhausted. They are already, as you know, very heavily drawn upon by the payments we have made to date. Indeed, as you know, the orders already placed or under negotiation, including the expenditure settled or pending for creating munitions factories in the United States, many times exceed the total exchange resources remaining at the disposal of Great Britain. The moment approaches when we will no longer be able to pay cash for shipping and other supplies.

18. Moreover, I do not believe that the Government and people of the United States would find it in accordance with the principles which guide them to confine the help which they have so generously promised only to such munitions of war and commodities as could be immediately paid for. You may be certain that we shall prove ourselves ready to suffer and sacrifice to the utmost effort for the cause, and that we glory in being its champions. The rest we leave with confidence to you and to your people, being sure that ways and means will be found which future generations on both sides of the Atlantic will approve and admire. 73

As it turned out, the Lend Lease Bill was Roosevelt's answer to Churchill's letter of December 8, and as far back as the summer of that year he had set some of the groundwork. At that time he had declared to the Defense Advisory Commission that the British shouldn't

... except possibly one thing that I think is worth talking about. In the present world situation of course there is absolutely no doubt in the mind of a very overwhelming number of Americans that the best defense of the United States is the success of Great Britain in defending itself; and that, therefore, quite aside from our historic and current interest in the survival of democracy in the world as a whole, it is equally important from a selfish point of view of American defense, that we should do everything to help the British Empire to defend herself.

I have read a great deal of nonsense in the last few days by people who can only think in what we may call traditional terms about finance. Steve (Mr. Early) was asking me about it this morning, and I thought it was better that I should talk to you than for Steve to talk to you; but I gave him one line that he would have used this morning if anybody had asked him, and that was this: In my memory and your memory, and in all history, no major war has ever been won or lost through lack of money.

I remember 1914 very well, and I will give you an illustration: In 1914 I was up at Eastport, Maine with the family in the end of July when I got a telegram from the Navy Department that it looked as if war would break out in Europe the next day. Actually, it did break out in a few hours, when Germany invaded Belgium. So I went across from the island and took a train down to Ellsworth, where I got on the Bar Harbor Express. I went into the smoking room. The smoking room of the express was filled with men from banking and brokerage offices in New York, most of whom were old friends of mine; and they began giving me their opinion about the impending world war in Europe. These eminent bankers and brokers assured me, and made it good with bets, that there wasn't enough money in all the world to carry on a European war for more than three months - bets at even money; that the bankers would stop the war within six months - odds of 2 to 1; that it was humanly impossible - physically impossible - for a European war to last for six months - odds of 4 to 1; and so forth and so on. Well, actually I suppose I must have won those - they were small five dollar bets - I must have made a hundred dollars. I wish I had bet a lot more.

There was the best economic opinion in the world that the continuance of war was absolutely dependent on money in the bank. Well, you know what happened.

be required to pay cash or borrow dollars to purchase merchant ships; instead, the ships should be leased to them for their use for the duration of the emergency. This, however, would not meet the British requirements, since it would involve a fee and a specified period of time.⁷⁴ President Roosevelt finally found his solution in the wording of the Lend Lease legislation approved on March 11, 1941:

'To sell, transfer title to, exchange, lease, lend, or otherwise dispose of ...' terms of repayment should be those which the President deems satisfactory, and the benefit to the United States may be payment or repayment in kind or property, or any other direct or indirect benefit which the President deems satisfactory. He could consider a contribution to the defense of the United States satisfactory payment. Contributions to a peaceful world order after the war could also be regarded as satisfactory payment, and reduction of trade barriers was one of the most interesting of these potentialities of Lend Lease. 75

During the return trip aboard the Tuscaloosa, Roosevelt was quite pensive, and Harry Hopkins, the only advisor asked by Roosevelt to accompany him during his rest, described the President's mood as follows:

I didn't know for quite a while what he was thinking about, if anything. But then-I began to get the idea that he was refueling, the way he so often does when he seems to be resting and carefree. So I didn't ask him any questions. Then, one evening, he suddenly came out with it-the whole program. He didn't seem to have any clear idea how it could be done legally. But there wasn't a doubt in his mind that he'd find a way to do it. 76

On December 16 he arrived back in Washington, and on the very next day he conducted a press conference, in which he demurely began by stating, "I don't think there is any particular news ..." Having thus relaxed the members of the press and induced their poised pencils back into their pockets, the President coyly continued:

Now we have been getting stories, speeches, et cetera in regard to this particular war that is going on, which go back a little bit to that attitude. It isn't merely a question of doing things the traditional way; there are lots of other ways to do them. I am just talking background, informally; I haven't prepared any of this - I go back to the idea that the one thing necessary for American national defense is additional productive facilities - factories, ship-building ways, munition plants, et cetera, and so on - the stronger American national defense is.

Orders from Great Britain are therefore a tremendous asset to American national defense; because they automatically create additional facilities. I am talking selfishly, from the American point of view, that production must be encouraged by us. There are several ways of encouraging it, as the narrow-minded fellow I have been talking about might assume, and has assumed. He has assumed that the only way was to repeal existing statutes, like the neutrality act and the old Johnson Act and a few other things like that; and then to lend the money to Great Britain to be spent over here-either lend it through private banking circles, as was done in the earlier days of the previous war, or make it a loan from this Government to the British Government.

Well, that is one type of mind that can only think of that method somewhat banal.

There is another one that is also somewhat banal-we may come to it, I don't know, and that is a gift; in other words, for us to pay for all these munitions, ships, plants, guns, et cetera, and make a gift of them to Great Britain. I am not sure that that is a necessity, and I am not at all sure that Great Britain could care to have a gift from the taxpayers of the United States. I doubt it very much.

Well, there are other possible ways and those ways are being explored. All I can do is to speak in very general terms, because we are in the middle of it. I have been at it now three or four weeks, exploring other methods of continuing the building up of our productive facilities and continuing automatically the flow of munitions to Great Britain. I will just put it this way, not as an exclusive alternative method but as one of several other possible methods that might be devised toward that end.

It is possible-I will put it that way-for the United States to take over British orders, and, because they are essentially the same kind of munitions that we use ourselves, turn them into American orders. We have

enough money to do it. And thereupon, as to such portion of them as the military events of the future determine to be right and proper for us to allow them to go to the other side, either lease or sell the materials, subject to mortgage, to the people on the other side. That would be on the general theory that it may still prove true that the best defense of the Great Britain is the best defense of the United States, and therefore that these materials would be more useful to the defense of the United States if they were used in Great Britain than if they were kept in storage here.

Now, what I am trying to do is to eliminate the dollar sign. That is something brand new in the thoughts of practically everybody in this room, I think-get rid of the silly, foolish old dollar sign.

Well, let me give you an illustration: Suppose my neighbor's home catches fire, and I have a length of garden hose four or five hundred feet away. If he can take my garden hose and connect it up with his hydrant I may help him to put out his fire. Now, what do I do? I don't say to him before that operation, "Neighbor, my garden hose cost me \$15; you have to pay me \$15 for it." What is the transaction that goes on? I don't want \$15 - I want my garden hose back after the fire is over. All right, if it goes through the fire all right, intact, without any damage to it, he gives it back to me and thanks me very much for the use of it. But suppose it gets smashed up - holes in it - during the fire; we don't have to have too much formality about it, but I say to him, "I was glad to lend you that hose; I see I can't use it any more, it's all smashed up." He says, "How many feet of it were there?" I tell him, "There were 150 feet of it." He says, "All right, I will replace it." Now if I get a nice garden hose back, I am in pretty good shape.

In other words if you lend certain munitions and get the munitions back at the end of the war, if they are intact - haven't been hurt - you are all right; if they have been damaged or have deteriorated or have been lost completely, it seems to me that you come out pretty well if you have them replaced by the fellow to whom you have lent them.

I can't go into details and there is no use asking legal questions about how you would do it, because that is the thing that is now under study; but the thought is that we would take over not all, but a very large number of future British orders; and when they come off the line, whether they are planes or guns or something like that, we would enter into some kind of

arrangement for their use by the British on the ground that it was the best thing for American defense, with the understanding that when the show was over, we would get paid sometime in kind, thereby leaving out the dollar sign in the form of a dollar debt and substituting for it a gentlemen's obligation to repay in kind. I think you all get it. 77

The next evening at a White House dinner, the President, his initial enthusiasm for Lend Lease not having subsided, wanted to explain his concept of the program further, and did so to Marriner S. Eccles, Governor of the Federal Reserve Board:

'Marriner, how did you like the idea of Lend Lease in the papers this morning?'

'I'm sorry to say that I had only time to read the headlines and didn't study it,' I replied, 'but I'd certainly like to hear about it.'

'Well,' said the President, 'I had a little free time to think when I was on my cruise to the West Indies. And this idea just occurred to me while I was sunning myself. I knew the British were at the bottom of the barrel for cash. They had to get some direct help from us, or the Nazis would win the war. I also knew that with the isolationist sentiment in the country, the desire to keep neutral would be the ground for a blast of opposition if I proposed a direct loan to a country that had not paid back what it borrowed from us during the last war.'

'But I think people can better understand what happens in international trade. You sell goods to the world and you must take goods back in payment. Well, everyone knows that we have a lot of surplus goods which we don't need and can't use, but most people feel there is a shortage of dollars. If we made a dollar loan to the British, it would seem to our people that we were giving money of which we were short, instead of goods which were in surplus. But it's different if we lend them goods that we don't want and get goods of theirs sometime in the future. Of course, even if we give them goods, they must be paid for in dollars. But by presenting this problem as an exchange of goods, which they now greatly need for the goods to be returned to us at some future date, it takes it out of the field of an international dollar loan and places it in the field of lending and leasing things with your neighbor.' 78

On December 29, Roosevelt in a Fireside Chat justified Lend Lease to the American public on the basis of national security. Asserting that Hitler had made "it clear that they intend not only to dominate all life and thought in their own country, but to enslave the whole of Europe and then to use the resources of Europe to dominate the rest of the world," President Roosevelt declared:

Frankly and definitely there is danger ahead-danger against which we must prepare. But we well know that we cannot escape danger or the fear of danger by crawling into bed and pulling the covers over our heads.

If England succumbed to the Axis powers, he stated, "all of us in America would be living at the point of a gun." Though admitting the risk of American involvement in the conflict by transferring arms and munitions to Great Britain, President Roosevelt argued that "there is far less chance of the United States getting into war, if we do all we can now to support the nations defending themselves against attack by the Axis, than if we acquiesce in their defeat, submit tamely to an Axis victory, and wait our turn to be the object of attack in another war later on." He went on to say "if we are to be completely honest with ourselves, we must admit that there is great risk in any course that we may take." However, among those courses open to the United States government,

There is no demand for sending an American Expeditionary Force outside our own borders. There is no intention by any member of your Government to send such a force. You can, therefore, nail any talk about sending armies to Europe as deliberate untruth.

Our national policy is not directed toward war. Its sole purpose is to keep war away from our country and our people.

It was then that he came to the primary thrust of his effort. In calling for the United States to become "the greatest arsenal of democracy,"

President Roosevelt declared somberly:

For us this is an emergency as serious as war itself. We must apply ourselves to our task with the same resolution, the same sense of urgency, the same spirit of patriotism and sacrifice, as we would show were we at war.

We have furnished the British great material support and we will furnish far more in the future.

There will be no 'bottlenecks' in our determination to aid Great Britain. No dictation, no combination of dictators, will weaken that determination by threats of how they will construe that determination. 79

On January 2, 1941, the arduous task of drafting the Lend Lease Bill began, and on January 10 the Bill was introduced to the Congress as H. R. 1776.

The President now faced a daunting political problem; how to gain congressional and popular support for a measure strong enough to give decisive aid to the democracies-but a measure that unfamiliar to most voters, expensive to the tax payers, and obviously unneutral; a measure that would so entangle the nation's military and diplomatic affairs with Britain's - and with some other nations' - as to arouse the isolationists; a measure that, above all, would challenge mood of No Foreign Wars. 80

The isolationists immediately labeled the bill as a "blank check" that would lead to war. Senator Burton K. Wheeler, chiefly responsible for the leadership of the group, went one step further when, shortly after the bill was introduced, he declared:

Never before has the Congress of the United States been asked by any President to violate international law ... Never before has the United States given to one man the power to strip this nation of its defenses. Never before has a Congress coldly and flatly been asked to abdicate ... The Lend-lease-give program is the New Deal's triple A program of foreign policy; it will plow under every fourth American boy ... (it) means war, open and complete warfare ..." 81

In a press conference on January 14, President Roosevelt was asked if

he had any comment regarding the "blank check" label attached by the isolationists to the Lend Lease Bill. President Roosevelt, in replying, went a bit further than the label:

Yes, I suppose so; the easiest answer is: Write me another that you would not put that label on but which would accomplish the same objective.

That is a perfectly good answer to all these people. That is not an answer at all, however, to those who talk about plowing under every fourth American child, which I regard as the most untruthful the most dastardly, unpatriotic thing that has ever been said. Quote me on that. That really is the rottenest thing that has been said in public life in my generation. 82

This particular exchange set the mood for the "great debate" that was to last two months. Numerous questions were heatedly tossed around and debated in the press and radio; however, nowhere were the details more carefully scrutinized or more closely contested and disputed than in the committee hearings conducted by the House of Congress. One such question centered on Great Britain's real needs and their part in the initiation of lend-lease aid. The isolationists, led by Charles A. Beard, claimed that Churchill's December 8 letter⁸³ proposed the form of aid it desired, and therefore labeled Lend-Lease a "British Plot."⁸⁴ Treasury Secretary Morgenthau, in testimony before the Senate Committee on Foreign Relations, pointed to the Pittman Resolution of June 15, 1940 which made war materials available to Latin American Governments as the primary origin of the Lend-Lease idea.⁸⁵ Under continued questioning on this same point, Morgenthau reiterated that Britain had left the question of what form the aid should take completely up to the Americans:

Senator Nye: Does Britain very definitely ask for the aid that is contemplated under this bill?

Secretary Morgenthau: No. What the British Treasury does is simply this-as a matter of fact, the late

British Ambassador, Lord Lothian, was the man who made the first announcement as to their needs, and simply put at our disposal the cold, hard facts--they are not in any way hysterical about it ... If this bill does not pass, they cannot continue to fight. The decision rests with the Congress of the United States as whether Great Britain, Greece, and China should or should not continue to fight.

Senator Nye: Have British spokesmen said as much?

Secretary Morgenthau: No; not in just those words. I do not go into those questions with them. The facts are that they will not place orders that they cannot pay for. Therefore, the ordering has practically ceased.

That is the situation, gentlemen. 86

Another such question involved the use of naval convoys. The isolationists argued that it would be in the interest of the United States to insure that war materials manufactured for the British arrived in Great Britain safely, and therefore a necessary corollary to an "act of war."⁸⁷ In this vein, Senator Nye asked Secretary of the Navy Knox whether in his opinion, the Lend-Lease Bill would allow the American Navy to escort British ships. Knox candidly answered that the President possessed the power to use navy escorts whether the bill passed or not.⁸⁸ Rauch agrees with Secretary Knox on this point, and cites as his argument the fact that "the authority of the President, without a declaration of war by Congress, to order the navy to engage in all manner of 'belligerent' action, including the attack against warships and shore positions of a foreign country with which the United States was legally at peace, had often been exercised and had never been successfully challenged in the courts."⁸⁹ Secretary of War Stimson states at the same hearings that conveying would not necessarily put the United States in the war.⁹⁰ Opponents of the Bill made every effort to amend the Act to expressly prohibit the use of convoys by the United States; however,

this amendment was defeated. Instead, an amendment which explicitly stated that the President was to be authorized no other powers than those he already possessed to order naval convoying or entry of American ships into a combat zone was passed.

Up to the time of the actual vote in Congress, opponents of Lend Lease continued the argument that passage of the Bill would signal forfeiture of the final opportunity that the Congress and the American people had to prevent American entry into the war. Supporters of the Bill declared that short of a direct attack on the United States, they would oppose entry into the war. On February 8 the House passed the Bill 260 to 165 and on March 8 with minor changes, the Senate voted in favor of the Bill, 60 to 31. The House accepted the Senate version of the Bill on March 11 and on the same day the President signed the Bill into law.

Innumerable descriptions of Lend Lease and of its implications to British ability to continue to fight and to the United States' ultimately participating in the war exist, too many to recount; however the most succinct belongs to Winston Churchill's Chief of Staff, General Lord Ismay:

The President himself had always been anxious to give and not sell the help we needed; but there was Congress to be considered. Shortly after the receipt of Churchill's letter, he publicly stated that there was no doubt that the best immediate defense of the United States was, in fact, the defense of Great Britain. Therefore, it was important from a purely American point of view that the United States should do everything possible to help the British Empire to defend itself. The Lend Lease Bill was prepared on that assumption and passed through Congress in March. In future, we were to have practically carte blanche, and there was to be no question of repayment. It was, as the Prime Minister described it in Parliament, 'the most unsordid act in the history of any nation.' 91

Sherwood has described the meaning of Lend Lease as the "end of the period of shame in which the United States sought to protect its own security by bootlegging methods." Through a system in which Roosevelt consulted with his "constitutional advisors," the decision was adopted that

... since the British were holding positions vital to American defense, it was our duty either to strengthen the British by all possible means or to send our own armed forces to occupy these positions and defend them ourselves.

Lend Lease kept the Allied Cause alive and fighting on all fronts for the two years needed for the United States to become a decisive force in actual combat. It further provided an historic precedent for meeting a comparable crisis abroad by methods short of immediate armed intervention. 92

Constitutional implications are also numerous and varied. According to Stimson and Bundy, "Lend Lease was a delegation of power, in the great tradition, to the one man to whom power must always be given in a national emergency - the President."⁹³ To the question of whether Lend Lease did indeed constitute an act of war, Divine has said, "The granting of Lend-Lease aid was very nearly an act of war, for it gave Britain unrestricted access to America's enormous industrial resources."⁹⁴ To the final question of whether Lend Lease implied a Congressional declaration of war, Corwin stated, "the act delegated to the President the power to fight wars by deputy; to all intents and purposes, it was a qualified declaration of war."⁹⁵ It would seem that however one might construe the above questions, President Roosevelt had certainly by Executive initiative brought the country one step closer to war with the Axis Powers.

Undeclared Naval War in the Atlantic

By December 1940 the problem of assuring that the supplies sent by the United States to Great Britain reached their destination was becoming critical. The German Navy and in particular their submarine force had, by this date, already sunk more than four million tons of shipping. President Roosevelt expressed his concern over these sinkings in a December 19 cabinet meeting. Though Secretary Stimson, at this meeting, recommended committing a large portion of American naval strength to the Atlantic to assure safe passage of supplies to Great Britain, President Roosevelt preferred considering measures to replace lost shipping, expressing his opinion that the situation did not yet warrant American naval intervention.⁹⁶ Concerning this same subject, President Roosevelt warned reporters on January 21, 1941 of the perils of convoying:

Obviously, when a nation convoys ships, either its own flag or another flag, through a hostile zone, just on the doctrine of chance, there is apt to be some shooting-and shooting comes awfully close to war, doesn't it? ... You can see that it is about the last thing we have in our minds. If we did anything, it might almost compel shooting to start. 97

During the weeks following, Secretaries Stimson and Knox and Admiral Stark urged Roosevelt to provide British shipping protection to insure its safety. Roosevelt, however, was evasive and noncommittal.⁹⁸ On March 24, Secretary Stimson, after a meeting with Knox, wrote the following entry in his diary: "We both agreed that the crisis is coming very soon and convoying is the only solution and that it must come practically at once."⁹⁹ The following day, after a meeting with senior British officers in Washington, he placed the following entry in his diary: "They argued, each one of them, that they could not, with present naval ships, assume the entire escort duty that is required to

protect the convoys of munitions to Great Britain.¹⁰⁰ During this same period, opposition to convoying was also building and intense pressure was being applied to Roosevelt. In addition to congressmen charging that American warships were already escorting British merchant ships, Senator Charles Tobey, on March 31 introduced a resolution prohibiting the President from approving use of convoys for escort duty.¹⁰¹

During meetings conducted in February and March 1941 between the American and British military staffs, at which time the "Atlantic first" strategy was adopted, "detailed plans were laid for full American participation in escorting convoys in the North Atlantic, for mobilizing heavy units of the American Navy in the eastern Atlantic, and even to deploying twenty-five or thirty American submarines 'for operations against enemy shipping in the Bay of Biscay and the Western Mediterranean.'"¹⁰² Here then are plans formulated by military staffs to be executed by politicians when the time is opportune. The opportune time, unless the nation is attacked first, normally follows careful preparation of the population by the administration. From this period to the present it is unfortunate that the Executive has felt more and more the need to prepare the population by deceiving it.

On April 2 President Roosevelt was considering seriously providing the United States Naval escort for the Atlantic convoys, and so ordered on that date, the Navy to draw up plans detailing "aggressive action by American warships against German submarines and German surface raiders in the Western Atlantic."¹⁰³ However, according to an April 10 entry in Secretary Stimson's diary, the President thought that any such plan was sure to be defeated by Congress, and therefore instead decided to strengthen the Neutrality Patrol which had been created at the outbreak

of the war to patrol three hundred miles out into the Atlantic in order to prevent the Axis from violating Western Hemispheric neutrality.

(April 10) was a very long day, mostly spent at the White House ... The President had evidently been thinking out things as far as he could to see how far he could go toward the direction of protection of the British Transport Line. He made up his mind that it was too dangerous to ask for the power to convoy. He thought that if such a resolution was addressed now, it would probably be defeated. On this I am rather inclined to differ with him, provided that he took the lead vigorously and showed the reasons for it. Nevertheless, he had made a decision and it was an honest one. Therefore he is trying to see how far over in the direction of Great Britain we could get and how would be the best way to do it. We had the atlas out and by drawing a line midway between the westernmost bulge of Africa and the easternmost bulge of Brazil, we found that the median line between the two continents was at almost longitude line 25 ... His plan is then that we shall patrol the high seas west of this median line, all the way down as far as we can furnish the force to do it, and that the British will swing their convoys over westward to the west side of this line, so that they will be within our seas. Then by use of patrol lanes and patrol vessels, we can patrol and follow the convoys and notify them of any German raiders or German submarines that we may see and give them a chance to escape. 104

Though the 25th parallel runs just west of Iceland, the line was later reshaped just sufficiently to include that island.¹⁰⁵ Significantly, also on this date the President announced that "Yesterday we signed an agreement with the Danish Minister in Washington, who acts on behalf of the King of Denmark, as Sovereign of Greenland, including Greenland in our system of cooperative hemispheric defense."¹⁰⁶ And also on this day, the President and Harry Hopkins drafted a cable to Churchill explaining their actions taken under the expansion of the Neutrality Patrol:

Before taking unilateral action I want to tell you of the steps that we propose to take in relation to the security of the Western Hemisphere and favorably

to affect your shipping. The United States government proposes to extend the security zone and patrol area utilizing naval vessels and aircraft working from Newfoundland, Greenland, Nova Scotia, the West Indies, Bermuda and the United States with possible later extension to Brazil if this can be arranged. We will want to be notified by you in great secrecy of movements of convoys so that our patrol units can seek out the ship of an aggressor nation operating west of the new line of the security zone. We propose to have the ships refueled at sea when advisable. We suggest that your long shipping hauls move to the greatest possible extent west of the new line up to the latitude of the northwestern approaches. As soon as you clear out the Red Sea we propose to send all types of goods in unarmed American flagships via the Red Sea or the Persian Gulf to Egypt or any other non-belligerent port. We think we can work out a plan for sending wheat and other transferable goods to Greenland and Iceland in American ships through the next six months. We expect very soon to make use of Danish ships and in about two months Italian ships. We hope to make available for the direct haul to England a large amount of our shipping which is now being utilized for other purposes. 107

When it came time to announce the decision to expand patrolling to the American public, President Roosevelt, in accord with the majority of the cabinet, thought it best to describe his actions as principally defensive. There was, however, one voice raised in strong dissent.

Secretary Stimson writes in his diary on 24 April:

(The President) kept reverting to the fact that the force in the Atlantic was merely going to be a patrol for any aggressor and to report that to America. I answered there, with a smile on my face, saying, 'But you are not going to report the presence of the German fleet to the Americans. You are going to report it to the British Fleet.' I wanted him to be honest with himself. To me it seems clearly a hostile act to the Germans, and I am prepared to take the responsibility of it. He seems to be trying to hide it into the character of a purely reconnaissance action which it really is not. 108

The President, however, on April 25 conducted a press conference and the following exchange with reporters occurred:

The President: Now this is a patrol, and has been a patrol for a year and a half, still is, and from time to time it has been extended, and is being extended, and will be extended-the patrol-for the safety of the Western Hemisphere.

Q. Could you tell us, sir, how far it may possibly go?

The President: That is exactly the question I hoped you would ask. As far on the waters of the seven seas as may be necessary for the defense of the American hemisphere.

Q. Mr. President-

Q. (interposing) Will there be any extension of its functions?

The President: No, no.

Q. Could you define its functions?

The President: Its function is protection of the American hemisphere.

Q. By belligerent means?

The President: The protection of the American hemisphere.

Q. Mr. President, does that include the protection of shipping, that is-

The President: (interposing) Protection of the American hemisphere.

Q. Mr. President, just what-

The President: (interposing) Now you can't-. Just what? What do you mean, just what? (No answer) The point of it is the protection of the American hemisphere and will be so used as it has been for the past year and a half. Now I can't tell you what is going to happen.

Q. Mr. President, can you tell us the difference between a patrol and a convoy?

The President: You know the difference between a cow and a horse?

Q. Yes, I know the difference.

The President: All right, there is just as much difference. Just exactly as much difference.

Q. Is there more patrolling against-

The President: The point of the merchant convoy-the escorting of merchant ships in a group to prevent an act of aggression against that group of merchant ships under escort. A patrol is a reconnaissance-I think that is the word-of certain areas of ocean to find out whether there is any possibly aggressive ship within the area, or areas, or the whole of the ocean, which might be coming toward the Western Hemisphere or into the Western Hemisphere.

Now one thing that will occur to you as being, just as you say, a rule of common sense-back there in 1939 the area of the patrol on the Atlantic was nearer, because there didn't seem to be any danger of attack on places like Bermuda, or Newfoundland, or Greenland, or Trinidad, or Brazil. The events, however, in the later period of the war show that such attack is more possible today than it was then. We have, incidentally, some rather valuable American lives and American property at various points that we didn't have in 1939. Again, Greenland, Newfoundland, Bermuda, and the obligation that we have under the Monroe Doctrine for the protection of Canada against any other non-American nation. That's old stuff. Then you have got other islands, the Bahamas, Antigua, and all the West Indies, Trinidad, British Guiana, which were not American possessions a year and a half ago. Today they are. Those bases, those points-

Q. (interposing) Mr. President-

The President: (continuing) It's a little like what I was talking about to one of the Senators over the phone today. He happened to come from the West, and it's a rather good simile. In the old days a wagon train across the plains-of course it had its immediate guard around it, that was perfectly true-but it didn't go-it didn't move across the plains unless it got reports from a long ways-200 - 300 miles off. It was not felt safe to wait until the Indians got two miles away before you saw them. It was advisable, if possible, to find out if the Indians were 200 miles away.

Q. Mr. President-

The President: (interposing) I think the simile is probably a useful one.

Q. Mr. President, if this patrol should discover some apparently aggressive ships headed toward the

Western Hemisphere, what would it do about it?

The President: Let me know. (Laughter)

Q. Mr. President, has this government any idea of escorting convoys?

The President: No, no, and that, I am afraid, will be awfully bad news to some of you. 109

There is, at this point, a need to examine the view that Roosevelt, by expanding patrolling responsibilities, was hoping thereby to increase the possibility of an incident occurring "that could dramatize Hitler's threat to the hemisphere and unite Americans behind a bolder strategy."¹¹⁰

Secretary Ickes was convinced that this was the case. In response to a remark that the President made regarding his belief that soon Germany would commit a blunder, Secretary Ickes writes in his diary on April 12:

There could be no doubt of the President's scarcely concealed desire that there might be an incident that would justify our declaring a state of war against Germany or at least providing convoys to merchant men carrying supplies to Great Britain. 111

Secretary Ickes, however, was equally convinced that Hitler would not give the President such an incident. Responding to the President's suggestion that belligerents confine their hostilities to waters immediately contiguous to their own shores, and the United States destroy or capture any ships of a belligerent discovered in the remainder of the ocean, Secretary Ickes entered in his diary the same day,

... I frankly told the President that such a suggestion coming at this time would have a bad reaction. I told him that the ground had not been prepared and that he would be playing into the hands of his critics who had been saying that his intention all along has been to lead the country into war. So far as I am concerned, I am willing that we should make an open declaration of war, but as I have thought it over since, I still think I gave the President good advice. He agreed with me and said that probably we would have to wait for a German 'incident.' I suspect that the Germans will avoid at all possible costs any such incident as the President would like to take advantage of. 112

Again on April 20 the Secretary wrote of his beliefs on this subject:

... I have no hesitation in setting down here that we are longing for an incident that would give us justification for setting up a system of convoying ships to England. If the Germans continue to sink British and neutral ships faster than they can be built, England cannot win in the long run. If we could convoy we could probably make a sea lane safe for shipping or at least we could greatly prolong the period necessary for Germans to sink enough ships to force England to her knees. For my part, I do not believe that the Germans intend to give us an incident. It is further my belief that even if we should determine to convoy ships, the Germans protest vigorously, but they would not attack those ships. Germany does not want the United States at this time to become a belligerent. For this reason it will endure patiently until England falls and then-. 113

The first such "incident" occurred on April 10, when the American destroyer Niblack, attempting to pick up survivors from a torpedoed Dutch merchant ship, made sound contact with a submarine and had driven it off with depth charges. President Roosevelt at this time made no effort to dramatize the emergency.

President Roosevelt in a radio address on May 27 announced the proclamation of an "unlimited national emergency" of that same day. His strongest words came in a promise to Great Britain that supplies would be safely delivered:

... From the point of view of strict naval and military necessity, we shall give every possible assistance to Britain and to all who, with Britain, are resisting Hitlerism or its equivalent with force of arms. Our patrols are helping now to insure delivery of the needed supplies to Britain. All additional measures necessary to deliver the goods will be taken. Any and all further methods or combination of methods, which can or should be utilized are being devised by our military and naval technicians, who, with me, will work out and put into effect such new and additional safeguards as may be needed.

I say that the delivery of needed supplies to Britain is imperative. I say that this can be done; it must be done; and it will be done. 114

Writing of the overwhelmingly favorable response to the President's speech, Sherwood affirms that "Roosevelt's words were taken as a solemn commitment; the entry of the United States into war against Germany now was considered inevitable and even imminent."¹¹⁵ Yet in spite of this favorable public and press reaction, which Roosevelt long awaited, the very next day he denied to the press that his speech had implied that he planned to use convoys.¹¹⁶ Sherwood wrote, "Hopkins, who thought he knows Roosevelt's mind, was totally unable to account for this sudden reversal from a position of strength to one of apparently insouciant weakness."¹¹⁷ Divine describes the President's action as "following a giant step forward with a huge leap backward that thoroughly confused the American people."¹¹⁸

During this same week, although it was not known until later, the Robin Moor, an American freighter, had been torpedoed and sunk in the South Atlantic by a German U-boat. The Germans had, for the first time, sunk an American merchant ship. When on June 11 reports from the first survivors landing in Brazil reached the White House, Hopkins prepared the following memorandum for the President:

The sinking of the Robin Moor violated international law at sea; it violates your policy of freedom of the seas.

The present observation patrol of the Navy for observing and reporting the movement of ships that are potential aggressors could be changed to a security patrol with the duty of providing security for American flag ships traveling on the seas outside of the danger zone.

It occurred to me that your instructions to the Navy Department could be that the United States Atlantic patrol forces, to be specific are to, in effect, establish the freedom of the seas, leaving it to the judgment of the Navy as to what measures of security are required to achieve this objective. 119

The President, however, refused to implement the provisions of the memorandum.

The German armies invaded Russia on June 22 and many Americans, believing that the threat to their own safety was postponed indefinitely, tended to relax. Secretary Stimson, fearing this same abatement of activity throughout the administration, worked more vigorously than before to convince Roosevelt of the continuing immediacy of the threat and the necessity of positive action by the American government. In a conference with the Chief of Staff and the War Plans Division of the General Staff, an estimate that Germany would require a minimum of one month and a maximum of three months to defeat Russia was generally accepted. The recommendation emerging from this meeting concluded that the United States should use this period to vigorously pursue its objectives in the Atlantic theater of operations. On July 3 Secretary Stimson sent a note to the President asking that he request from Congress a declaration of war. This memorandum, too, was rejected by the President.¹²⁰

July 1941 was marked by the American occupation and defense of Iceland. According to James MacGregor Burns, July also marked a turning point in President Roosevelt's battle within himself to commit or not to commit the United States to a war course.

If ever there was a point when Roosevelt knowingly crosses some threshold between aiding Britain in order to stay out of war and aiding Britain by joining the war, July 1941 was probably the time. ¹²¹

On June 17 Admiral Stark had sent a message to Hopkins, which contained the mission the 1st Marine Brigade was to implement upon their occupation of Iceland. "In cooperation with the British Garrison, defend Iceland against hostile attack." Burns goes on to reveal the singular contents of the note and President Roosevelt's reaction:

... (Stark) wanted the President to approve the order, because there was so much potential 'dynamite' in it. The normal thing to do, he went on, was to put the 4,000 American troops under British command, as the British wanted, but he could not go quite that far. 'I have,' however, as the President will note, 'ordered the force to cooperate with the British (in defending a British base operated by the British against the enemy). I realize that this is practically an act of war.' Stark got the words he wanted at the bottom of the page-

'OK FDR'. 122

The same day that the Icelandic government agreed to the defense of its shores by the United States, the President ordered the Marine Brigade to depart for Iceland. This was on July 1, and on July 6 Secretary Stimson, referring to the President's general plans, told a meeting of his advisors, "the President must be frank. Whether or not he was going to ask the Congress for action, he must in any event tell them what he is doing and what he intends to do."¹²³ On July 7 President Roosevelt informed Congress that,

In accordance with the understanding so reached, forces of the United States Navy have today arrived in Iceland in order to supplement and eventually to replace, the British forces which until now have been stationed in Iceland in order to insure the adequate defense of that country. 124

The occupation and defense of Iceland was to be implemented by Hemispheric Defense Plan 4, which was issued on July 11, but not to be executed until July 20. The general provisions regarding the mission of the United States Navy in this plan were as follows:

(a) to protect United States and Icelandic flag shipping by 'escorting, convoying, and patrolling as required by circumstances, and by destroying hostile forces which threaten such shipping' and

(b) - 1. to escort convoys of United States and Icelandic flag shipping,

2. including ships of any nationality which

might join such convoys between the United States and Iceland. 125

However, the day before the effective date of this plan, the execution of the clause (b-2), providing for the escort of ships of any nationality, was postponed indefinitely. The Navy received on August 13 instructions preliminary to an actual order to implement the postponed provision of the plan. This would suggest that a decision had been reached by Roosevelt and Churchill at the Atlantic Conference.¹²⁶ The final order, however, was not received by the Navy until after the United States naval destroyer Greer was attacked by a German U-boat on September 4, 1941. At this time, Rauch states that the attack upon the Greer "was interpreted by Roosevelt as relieving him of his virtual pledge against naval escorts of convoys containing Allied merchant ships."¹²⁷ And Rauch further concludes that Roosevelt's reaction to the German attack on the Greer "opened the period of limited and undeclared warfare for the United States."¹²⁸

Though the exact details of the incident were the subject of considerable dispute and investigation, the fact that the Greer was not engaged in escorting a convoy but in carrying mail to Iceland was never in doubt. Senator David I. Walsh was able to obtain from Admiral Stark a thorough record of the Greer's actions. The Greer was in waters claimed by Germany to be a war zone and by the United States to be a defense zone, when the British patrol plane warned of the presence of a submerged submarine ten miles ahead. The Greer made sound contact with the submarine, and in conformity with the standard operating procedure of the Neutrality Patrol began trailing the U-boat and reporting its exact position to the patrol plane. The British plane dropped four depth charges without effect, and returned to its base for fuel. The

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Greer continued following the submarine for two more hours, at which time the submarine launched a torpedo at the Greer. The Greer then dropped eight depth charges, during which time the submarine launched one or two more torpedoes. It was then that the Greer lost contact with the U-boat. Two hours later the Greer once again made contact with the U-boat and dropped eleven more depth charges. At this time the Greer broke contact to continue to Iceland. Before breaking contact, however, the Greer did radio the submarine's position to British destroyers and planes in the general area.¹²⁹

It would seem that here Roosevelt had the incident he had long awaited. The Greer clearly had been attacked while executing the mission to patrol while carrying the mail to Iceland. The reporting of information had been initiated in 1939 and following hostile ships had started immediately after the President's declaration of unlimited emergency in May 1941. However, Samuel Rosenman states, "the President was determined that no incident like this-illegal though it was-should lead him to ask for a declaration of war."¹³⁰ The President could easily have found grounds to ask for a declaration of war in the Robin Moor and Steel Seafarer sinkings¹³¹ which were also clearly cases of German attacks. Rauch explains Roosevelt's inaction in terms of lessons learned from the First World War:

Such grounds for American entry into the war Roosevelt himself had ruled out long before when he advocated measures in the Neutrality Act designed to avoid 'incidents' by prohibiting American travel and shipping in combat zones. Such incidents had led to American entry into the First World War; they had been called flimsy excuses in retrospect, and Roosevelt was determined to avoid this, like many other of Wilson's mistakes.' ¹³²

In A Fireside Chat to the nation on September 11, President

Roosevelt made clear to the world that the United States was about to embark on a new policy in the Atlantic:

In the waters which we deem necessary for our defense, American naval vessels and American planes will no longer wait until Axis submarines lurking under the water or Axis raiders on the surface of the sea strike their deadly blow first.

Upon our naval and air patrol - now operating in large numbers over a vast expanse of the Atlantic Ocean-falls the duty of maintaining the American policy of freedom of the seas-now. That means very simply and clearly, that our patrolling vessels and planes will protect all merchant ships-not only American ships but ships of any flag-engaged in commerce in our defensive waters ...

It is no act of war on our part when we decide to protect the seas which are vital to American defense. The aggression is not ours. Ours is solely defense.

But let this warning be clear. From now on, if German or Italian vessels of war enter the waters, the protection of which is necessary for American defense, they do so at their own peril.

The orders that I have given as Commander-in-Chief to the United States Army and Navy are to carry out that policy-at once.

The sole responsibility rests upon Germany. There will be no shooting unless Germany continues to seek it. 133

This speech, because of the orders given by the President, became known as the "shoot-on-sight" speech. Burns sums up the implications of the speech in the following terms:

... Roosevelt was in effect declaring naval war on Germany in response to the war of aggression he believed Germany was waging against this nation. The Atlantic cold war was over; now it was a hot war, limited only by America's neutrality laws and by Hitler's restraints on his submarine fleet. 134

Two days after the speech, the President ordered the Navy to execute on September 16 clause (b(2)) of Hemisphere Defense Plan 4, providing for the escort of all merchant ships, regardless of nationality, by

United States Naval ships. A delighted Churchill immediately transferred forty destroyers from the Western Atlantic to protect the waters surrounding the British Isles. Secretary Knox in an address to the American Legion Convention in Milwaukee on September 15 dispelled all doubts as to the President's meaning on September 11:

... Beginning tomorrow ... the Navy is ordered to capture or destroy by every means at its disposal Axis-controlled submarines or surface raiders in these waters.

That is our answer to Mr. Hitler. 135

Divine, at this point, leaves the ultimate outbreak of war between Germany and the United States to be decided by Hitler:

... In the long run, the President's decision meant war with Germany, since from this time forward there would inevitably be more and more U-boat attacks on American destroyers, increasingly heavy loss of life and a direct challenge to the nation's honor and prestige. Only Hitler's reluctance to engage in war with the United States while he was still absorbed in the assault of Russia prevented an immediate outbreak of hostilities. 136

With the convoy issue now resolved to President Roosevelt's satisfaction, he next moved to repeal certain provisions of the Neutrality Act. On October 9, the President asked Congress to repeal "crippling provisions" of the Act. He specified the provisions prohibiting the arming of American merchant ships and their entry into combat zones and thence into belligerent ports.¹³⁷ What this, in effect, would mean was armed American merchant ships transporting contraband into Allied ports. International law traditionally recognized that armed merchant ships carrying contraband cargo were subject to attack without warning and their cargo was subject to seizure by the enemy of the country to which the ship was bound. More modern interpretation of international law made aid to the victims of aggression an obligation.

In January 1941 President Roosevelt had clearly stated that what he now asked Congress to do "might almost compel shooting to start -- and shooting comes awfully close to war."¹³⁸ What President Roosevelt was seeking to accomplish by his request of Congress to repeal these provisions of the Neutrality Act was release from his commitment under Lend-Lease to resort to no "acts of war" and at the same time be given "authority to wage an undeclared naval war, and approval of the 'shoot-on-sight' order" of September 11.¹³⁹ Rauch argues strongly that these requests by the President, rather than being designed to take the nation into war, since the President had had ample opportunity to do that with the sinkings of the Robin Moor and the Steel Seafarer, and the attack on the Greer, were actually designed to avoid war:

... The truth of the situation was that Hitler was attempting to provoke Roosevelt into a blunder on either one of the two sides of his dilemma; by giving way to the interventionist demand for a declaration of war, which could throw the country into a paralyzing fight between isolationists and internationalists with grave risk of a victory in Congress for the former; or by giving way to the isolationist demand to retreat from the policy of aid to Britain, which would suit Hitler quite as well. Roosevelt refused to be provoked into taking either course. 140

Rauch further states that the President's request to Congress to repeal certain portions of the Neutrality Act

... argued that he wished to give full opportunity to Congress and people to debate and decide whether an undeclared naval war should be waged to insure delivery of Lend-Lease cargoes to defenders against aggression. 141

What Rauch does not reveal are the omissions and half truths by which Roosevelt managed the Congress and people, and, while it might be argued that under this influence the Congress and the people were given full opportunity to decide, such orchestration of events leaves little

doubt that any other but the planned decision will finally be adopted.

On October 16 the destroyer Kearny, while attempting to aid a slow convoy of ships which was under attack from U-boats about four hundred miles south of Iceland, was torpedoed; eleven American lives were lost. This provided the catalyst to speed action in the Congress to repeal the Neutrality Act, and President Roosevelt, taking full advantage of it, declared in a Navy Day speech on October 27,

America has been attacked. The U.S.S. Kearny is not just a Navy ship. She belongs to every man, woman and child in the Nation. Illinois, Alabama, California, North Carolina, Ohio, Louisiana, Texas, Pennsylvania, Arkansas, New York, Georgia and Virginia - those are the home states of the honored dead and wounded of the Kearny. Hitler's torpedo was directed at every American, whether he lives on our sea coast or in the innermost part of the country far from the seas and far from the marching hordes of would-be conquerors of the world.

The purpose of Hitler's attack was to frighten the American people off the high seas-to force us to make a trembling retreat. This is not the first time he has misjudged the American spirit. That spirit is now aroused ...

The forward march of Hitler and of Hitlerism can be stopped - and will be stopped.

Very simply and very bluntly - we are pledged to pull our own in the destruction of Hitlerism ...

That determination of ours not to take it lying down has been expressed in the orders to the American Navy to shoot on sight. Those orders stand ...

Our American merchant ships must be armed to defend themselves against the rattlesnakes of the sea.

Our American merchant ships must be protected by our American Navy.

In the light of a good many years of personal experience, I think that it can be said that it can never be doubted that the goods will be delivered by this nation, whose Navy believes in the tradition of 'Damn the torpedoes; full speed ahead!' 142

By November 13 Congress had approved the revisions of the Neutrality Act asked for by President Roosevelt, and on November 17 the President signed the measure. Divine explains the revision of the Neutrality Act as

... bound to lead to war with Germany, within a matter of months. Hitler could be forbearing when it was only a question of American escort vessels operating in the western Atlantic. He could not have permitted American ships to carry a major portion of lend-lease supplies to Britain without giving up the Battle of the Atlantic. With the German offensive halting before Leningrad and Moscow in December, Hitler would have been compelled to order his submarine commanders to torpedo American ships as the only effective way to hold Britain in check. And once Germany began sinking American ships regularly, Roosevelt would have had to ask Congress for a declaration of war. 143

Just three weeks later, the Japanese attacked Pearl Harbor, rendering the question of a declared war in the Atlantic moot.

Thus had President Roosevelt guided the United States to war, having a few short months before assured the Congress and the people that war "is about the last thing we have in our minds."¹⁴⁴ Until the destroyers for bases deal was completed in private, he had maintained in public there was no connection between the two. He had ostensibly undertaken the Lend Lease Program to keep the United States out of war, whereas it appears by the evidence that it took the United States a step closer to war. Though unlike President Johnson, who almost a quarters of a century later was, by manipulation and deception, to guide Congress into "a functional equivalent of a declaration of war"¹⁴⁵ over the Maddox incident, President Roosevelt did not seize the Greer incident to obtain a declaration of war by Congress. Instead, by his "shoot-on-sight" order he did effectively bypass the Congress and lead the Nation on a course that probably could have no other eventual result than war.

Is this the policy of a President who declared: "Our national policy is not directed toward war. Its sole purpose is to keep war away from our country and our people"?¹⁴⁶ Is this President less guilty of deceit than a President who after obtaining his "declaration of war" from Congress on August 10, 1964, declared on October 21, 1964, "... we are not about to send American boys 9,000 or 10,000 miles away from home to do what Asian boys ought to be doing for themselves"?¹⁴⁷

Notes

¹Thomas A. Bailey, The Man in the Street (Gloucester: Peter Smith, 1964), pp. 11 - 13.

²William Henry Chamberlin, "The Bankruptcy of a Policy," Perpetual War for Perpetual Peace, ed. by Harry Elmer Barnes (Caldwell, Idaho: The Caxton Printers, Ltd., 1953), pp. 486 - 89.

³Robert A. Divine, Roosevelt and World War II (Baltimore: The Johns Hopkins Press, 1969), p. 47.

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²³Sanborn, "Roosevelt is Frustrated in Europe," p. 211.

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- ³²Divine, Roosevelt and World War II, p. 33.
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- ³⁶Churchill, Their Finest Hour, p. 227.
- ³⁷Ibid., pp. 228 - 229.
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- ⁴⁰Ibid.
- ⁴¹Philip Goodhart, Fifty Ships That Saved the World (Garden City: Doubleday and Company, Inc., 1965), p. 100.
- ⁴²Ibid., p. 149.
- ⁴³Langer and Gleason, The Challenge to Isolation, p. 747.
- ⁴⁴Churchill, Their Finest Hour, p. 402.
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- ⁴⁶Goodhart, Fifty Ships, p. 153.
- ⁴⁷Ickes, Secret Diary, 3, pp. 187 - 188.
- ⁴⁸President Franklin D. Roosevelt's personal notes from the Cabinet meeting, dated 9:37 P.M., August 2, 1940 (Franklin D. Roosevelt Library, Hyde Park, New York: His Personal Letters, II, pp. 1050 - 51).
- ⁴⁹Divine, Roosevelt and World War II, pp. 34 - 35.
- ⁵⁰The New York Times, August 5, 1940, p. 1.
- ⁵¹Goodhart, Fifty Ships, p. 160.
- ⁵²Ibid., p. 162.
- ⁵³See Appendix B, p. 327.
- ⁵⁴Ibid., p. 163.
- ⁵⁵Senator Walsh's radio address over the CBS network, August 13, 1940, New York Times, August 14, 1940, p. 1.
- ⁵⁶Langer and Gleason, The Challenge to Isolation, p. 761.
- ⁵⁷Goodhart, Fifty Ships, p. 168.
- ⁵⁸39 Op. Atty. Gen. 484 (August 24, 1940).
- ⁵⁹U.S., Statutes at Large, Vol. 22, p. 582 (March 3, 1883).
- ⁶⁰U.S., Statutes at Large, Vol. 54, p. 681 (June 28, 1940).
- ⁶¹For extracts from President Roosevelt's Press conference on September 3, 1940, see Appendix B, p. 330.
- ⁶²Churchill, Their Finest Hour, p. 415.

⁶³New York Post, September 9, 1940, p. 1.

⁶⁴The New York Times, September 4, 1940, p. 1.

⁶⁵Ibid.

⁶⁶Edward S. Corwin, The President: Office and Powers (New York: New York University Press, 1940), p. 238.

⁶⁷Rosenman, The Public Papers and Addresses of Franklin D. Roosevelt, 9, p. 264.

⁶⁸Divine, Roosevelt and World War II, p. 36.

⁶⁹Langer and Gleason, The Challenge to Isolation, p. 775.

⁷⁰Churchill, Their Finest Hour, p. 404.

⁷¹Ibid., p. 559.

⁷²Basil Rauch, Roosevelt: From Munich to Pearl Harbor (New York: Barnes and Noble, Inc., 1950), p. 292. (I insert this summary by Rauch of alternatives proposed by Churchill in his December 8, 1940 letter to President Roosevelt because it is a concise yet astute statement of facts revealing an understanding of Churchill's intent. Churchill possessed an amazing insight into what exactly would provoke Roosevelt to act, and Rauch discerned this in his short summary.) For actual extract from Prime Minister Churchill's December 8, 1940 letter to President Roosevelt, see Appendix B, p. 340.

⁷³Churchill, Their Finest Hour, pp. 566 - 67.

⁷⁴Rauch, Roosevelt: From Munich to Pearl Harbor, p. 294.

⁷⁵Ibid., p. 295.

⁷⁶Sherwood, Roosevelt and Hopkins, p. 224.

⁷⁷Rosenman, Public Papers and Addresses, 9, pp. 604 - 608.

⁷⁸Marriner S. Eccles, Beckoning Frontiers (New York: Alfred A. Knopf, Inc., 1951), p. 348.

⁷⁹Rosenman, Public Papers and Addresses, 9, pp. 633 - 44.

⁸⁰James MacGregor Burns, Roosevelt The Soldier of Freedom (New York: Harcourt, Brace & Jovanovich, 1970), p. 43.

⁸¹U.S., Congressional Record, 77th Cong., 1st sess., Vol. 87, Pt. 10 Appendix, pp. A 178 - 9.

⁸²Rosenman, Public Papers and Addresses, 9, pp. 711 - 12.

⁸³For extract from Prime Minister Churchill's December 8, 1940 letter to President Roosevelt, see Appendix B, p.340.

⁸⁴Rauch, Roosevelt: From Munich to Pearl Harbor, p. 306.

⁸⁵U.S., Congress, Senate, Committee on Foreign Relations, Hearings, before the Committee on Foreign Relations, Senate, on S 275, 77th Cong., 1st sess., 1941, p. 30.

⁸⁶Ibid., p. 43. See December 8, 1940 letter from Churchill to Roosevelt, page

⁸⁷Rauch, Roosevelt: From Munich to Pearl Harbor, pp. 306 - 07.

⁸⁸Senate Hearings on S. 275, p. 204.

⁸⁹Rauch, Roosevelt: From Munich to Pearl Harbor, p. 307.

⁹⁰Senate Hearings on S. 275, pp. 89 - 90, 115.

⁹¹Hastings Ismay, The Memoirs of General Lord Ismay (New York: The Viking Press, 1960), p. 218

⁹²Sherwood, Roosevelt and Hopkins, p. 229.

⁹³Stimson and Bundy, On Active Service, p. 361.

- ⁹⁴ Divine, Roosevelt and World War II, p. 40.
- ⁹⁵ Corwin, The President: Office and Powers, p. 239.
- ⁹⁶ Stimson and Bundy, On Active Service, p. 367.
- ⁹⁷ Presidential Press Conference 712, January 21, 1941.
New York Times, January 22, 1941, p. 1.
- ⁹⁸ Burns, Roosevelt The Soldier of Freedom, p. 89.
- ⁹⁹ Diary entry, Henry L. Stimson, March 24, 1941. Stimson and Bundy, On Active Service, p. 367.
- ¹⁰⁰ Diary entry, Henry L. Stimson, March 25, 1941. Ibid., p. 368.
- ¹⁰¹ Divine, Roosevelt and World War II, p. 40.
- ¹⁰² Burns, Roosevelt The Soldier of Freedom, p. 87.
- ¹⁰³ Sherwood, Roosevelt and Hopkins, p. 291.
- ¹⁰⁴ Stimson and Bundy, On Active Service, p. 368.
- ¹⁰⁵ Sherwood, Roosevelt and Hopkins, p. 291.
- ¹⁰⁶ Rosenman, Public Papers and Addresses, Vol. 10, p. 96. (Rosenman includes a note on p. 98 which explains that the United States was given the right to construct, maintain, and operate such landing fields, sea plane facilities, and radio and meteorological installations as would be necessary to maintain Greenland's independent status. Furthermore, the right was given to the United States to improve and deepen harbors, and approaches thereto, install aids to navigation by air and water, construct roads, communications services, fortifications, repair and construct storage facilities, housing for personnel, and in general to insure the efficient operation, maintenance and protection of such defense facilities.)
- ¹⁰⁷ Sherwood, Roosevelt and Hopkins, pp. 291 - 92.

¹⁰⁸Diary entry, Henry L. Stimson, April 27, 1941. Stimson and Bundy, On Active Service, pp. 368 - 69.

¹⁰⁹Rosenman, The Public Papers and Addresses, 10, pp. 133 - 35.

¹¹⁰Burns, Roosevelt The Soldier of Freedom, p. 90.

¹¹¹Ickes, Secret Diary, 3, p. 466.

¹¹²Ibid., p. 470.

¹¹³Ibid., p. 485.

¹¹⁴Rosenman, Public Papers and Addresses, 10, p. 190.

¹¹⁵Sherwood, Roosevelt and Hopkins, p. 298.

¹¹⁶Stimson and Bundy, On Active Service, p. 371.

¹¹⁷Sherwood, Roosevelt and Hopkins, pp. 298 - 99.

¹¹⁸Divine, Roosevelt and World War II, p. 43.

¹¹⁹Sherwood, Roosevelt and Hopkins, p. 299.

¹²⁰Richard N. Current, Secretary Stimson (New Brunswick, New Jersey: Rutgers University Press, 1954), pp. 150 - 151.

¹²¹Burns, Roosevelt The Soldier of Freedom, p. 105.

¹²²Ibid., pp. 104 - 05.

¹²³Stimson and Bundy, On Active Service, p. 373.

¹²⁴Rosenman, Public Papers and Addresses, 10, pp. 255 - 56.

¹²⁵Rauch, Roosevelt: From Munich to Pearl Harbor, p. 355.

- ¹²⁶ Ibid., pp. 355 and 416.
- ¹²⁷ Ibid., p. 355.
- ¹²⁸ Ibid.
- ¹²⁹ U.S., Congressional Record, 77th Cong., 1st sess., Vol. 87, pt. 8, pp. 8314 - 5.
- ¹³⁰ Samuel I. Rosenman, Working With Roosevelt (New York: Harper and Brothers, 1952), p. 290.
- ¹³¹ Sunk in the Red Sea on September 6, 1941.
- ¹³² Rauch, Roosevelt: From Munich to Pearl Harbor, p. 417.
- ¹³³ Rosenman, Public Papers and Addresses, 10, pp. 391 - 92.
- ¹³⁴ Burns, Roosevelt The Soldier of Freedom, p. 141.
- ¹³⁵ William L. Langer and S. Everett Gleason, The Undeclared War (New York: Harper and Brothers, 1953), p. 746.
- ¹³⁶ Divine, Roosevelt and World War II, p. 45.
- ¹³⁷ Rauch, Roosevelt: From Munich to Pearl Harbor, pp. 419 - 23.
- ¹³⁸ Presidential Press Conference 712, January 21, 1941. New York Times, January 21, 1941, p. 1.
- ¹³⁹ Rauch, Roosevelt: From Munich to Pearl Harbor, p. 423.
- ¹⁴⁰ Ibid., pp. 421 - 22.
- ¹⁴¹ Ibid., p. 423.
- ¹⁴² Rosenman, Public Papers and Addresses, 10, pp. 438 - 42.

¹⁴³Divine, Roosevelt and World War II, p. 46.

¹⁴⁴Presidential Press Conference 712, January 21, 1941.
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¹⁴⁵U.S., Congress, Senate, Committee on Foreign Relations, United States Commitments to Foreign Powers, Hearings, before the Committee on Foreign Relations, Senate, 90th Cong., 1st sess., 1967, pp. 20, 21.

¹⁴⁶Rosenman, Public Papers and Addresses, 9, pp. 633 - 44.

¹⁴⁷J. William Fulbright, The Crippled Giant (New York: Vintage, 1972), p. 191.

CHAPTER III

TRUMAN AND KOREA: A CASE STUDY IN UNCONSCIOUS DECEPTION

... Truman's warmaking power sprang from the need for decisive action to halt aggression. Necessity creates power, and presidential power has always been commensurate with the nation's needs. 1

To exercise such power effectively and with the correct measure of success, however, requires a decisive leader endowed with "courage not unlike that of the military commander whose best laid plans require a dash of luck for their successful completion."² Harry S. Truman proved to be amply bestowed with just such courage, and at no time was it more in evidence than during the seven days from June 24 to June 30, 1950. That week witnessed decisive leadership at its zenith; however, it was neither the Congress nor the American people who were to benefit from such leadership. It was instead the expanding group of advocates of Executive ascendancy in foreign relations, significantly, in this case, the war-making power.

This is a case study of the leader, the leader's courage and decisive action, but throughout it is a compilation of facts which strongly point to a decision made in private and revealed in deception. It examines the leader Harry S. Truman and the decision to halt North Korean aggression against the Republic of Korea. From March 1, 1949 to June 24, 1950 the foreign policy of the United States toward the Republic of Korea is probed and questioned. It is questioned because the policy appears inconsistent and ill-defined. Then the attack itself becomes the focus of a question: Was the North Korean attack a

surprise? Though this question was answered affirmatively immediately after the attack, if one pieces together evidence emerging after calm had returned to all participants an altogether different answer appears appropriate. The decision to commit United States Armed Forces is examined in detail, just as is the legal background of the decision scrutinized. And finally, the leader himself is made the focus of special consideration. Was a deception played before the Congress and the American people by their President? If it was, was it intentional, measured and calculated; or was it instead the unintentional action of a leader too immersed in decision-making to know better? However, whether unintentional or not, was such behavior patterned after that of his predecessor? And, more important, could such behavior establish a pattern in the Executive to be followed by his successors?

United States Policy Toward Korea Prior to June 24, 1950

Our defensive dispositions against Asiatic aggression used to be based on the west coast of the American continent.

The Pacific was looked upon as the avenue of possible enemy approach. Now the Pacific has become an Anglo-Saxon lake and our line of defense runs through the chain of islands fringing the coast of Asia.

It starts from the Philippines and continues through the Ryukyu Archipelago, which includes its main bastion, Okinawa. Then it bends back through Japan and the Aleutian Island chain to Alaska. 3

On March 1, 1949, General Douglas MacArthur, in an interview in Tokyo, had unwittingly outlined a future facet of United States defense policy that was to be later analyzed, praised and criticized by statesmen, journalists and historians, when in a major speech on Asian policy

before the National Press Club on January 12, 1950, the official American defense perimeter was similarly traced by Secretary of State Dean Acheson. In retrospect, examining possible causes to explain the North Korean aggression, the aforementioned three groups divided themselves for and against attributing the omission of Korea from the American defense perimeter as a contributing factor in the Communist decision to invade South Korea. Acheson declared: "This defensive perimeter runs along the Aleutians to Japan and then goes to the Ryukyus ... The defensive perimeter runs from the Ryukyus to the Philippine Islands." He continued:

So far as the military security of other areas of the Pacific is concerned, it must be clear that no person can guarantee these areas against military attack. But it must also be clear that such a guarantee is hardly sensible or necessary within the realm of practical relationships.

Should such an attack occur-one hesitates to say where such an attack should come from-the initial reliance must be on the people attacked to resist it and then upon the commitments of the entire civilized world under the Charter of the United Nations which so far has not proved a weak reed to lean on by any people who are determined to protect their independence against outside aggression. But it is a mistake, I think, in considering Pacific and Far Eastern problems to become obsessed with military considerations. Important as these are, there are other problems that press, and these other problems are not capable of solution through military means. These other problems arise out of the susceptibility of many areas, and many countries of the Pacific area, to subversion and penetration. That cannot be stopped by military means. 4

After excluding Korea from the American defense perimeter, Secretary Acheson pledged continued support for the Korean Republic:

In Korea we have taken great steps which have ended our military occupation, and in cooperation with the United Nations we have established an independent and sovereign country recognized by nearly all the rest of the world. We have given that nation great help in getting itself

established. We are asking the Congress to continue that help until it is firmly established and that legislation is now pending before the Congress. The idea that we ought to scrap all of that, that we should stop half way through the achievement of the establishment of this country seems to me to be the most utter defeatism and utter madness in our interests in Asia. 5

Later, in replying to those who argued that his "speech 'gave the green light' to the attack on South Korea by not including it within the 'defense perimeter,'" Acheson continued,

... This was specious, for Australia and New Zealand were not included either, and the first of all our mutual defense agreements was made with Korea. If the Russians were watching the United States for signs of our intentions in the Far East, they would have been more impressed by the two years' agitation for withdrawal of combat forces from Korea, the defeat in Congress of a minor aid bill for it, and the increasing discussion of a peace treaty with Japan. 6

Acheson's reference to the "defeat in Congress of a minor aid bill" was the January 19, 1950 rejection of a \$60,000,000 supplemental Korean aid bill by the House of Representatives. This sum was in addition to the \$150,000,000 appropriation requested by the Executive and accepted by the Congress for fiscal year 1949. Though this supplemental request was later passed as part of a combined Korea-China aid bill by the Congress on February 9, and an additional \$100,000,000 in early May for fiscal year 1951 was also approved by the Congress, the January 19 defeat could not help but provoke questions concerning the extent and strength of Congressional support for economic assistance to Korea. Their basis for withholding full economic support for the President's program in Korea was a combination of misgivings directed toward United States Far Eastern Policy. During this same period, President Truman was also experiencing certain misgivings about the situation in Korea, as he later explained in his Memoirs:

To bolster Korea's military position, I approved a defense agreement which was signed on January 26, 1950. We continued, however, to be concerned over the internal and economic situation in South Korea. One of the reasons, though a minor one, why I had approved the policy of troop withdrawal was the danger that we might be unable to escape involvement in the political arguments of the young state. President Syngman Rhee is a man of strong convictions and has little patience with those who differ with him. From the moment of his return to Korea in 1945, he attracted to himself men of extreme right-wing attitudes and disagreed sharply with the political leaders of more moderate views, and the withdrawal of military government removed restraints that had prevented arbitrary actions against his opponents. I did not care for the methods used by Rhee's police force to break up political meetings and control political enemies, and I was deeply concerned over the Rhee government's lack of concern about the serious inflation that swept the country. Yet we had no choice but to support Rhee. Korea had been overrun and down-trodden by the Japanese since 1905 and had had no chance to develop other leaders and leadership.

We knew that Rhee's government would be in grave danger if the military units of North Korea were to start a full scale attack. For that reason we wanted him to make his own area as stable as it could be made, and, in addition, we wanted him to bring a measure of prosperity to the peasants that would make them turn their backs on the Communist agitators. 7

In testimony before the Senate Foreign Relations Committee on March 7, 1950, Secretary Acheson reaffirmed United States support of the Republic of Korea. "The United States hopes to achieve the objective of strengthening the Republic of Korea to the point where it can: (1) successfully withstand the threat of expanding Communist influence arising out of the existence in North Korea of an aggressive Soviet-dominated Communist regime and (2) serve as a nucleus for the eventual peaceful unification of the entire country on a democratic basis."⁸

Of special significance during this period immediately prior to the North Korean attack was Senator Tom Conally's contribution to the growing wealth of confusion surrounding United States defense policy of Korea.

In an interview published in the May 5, 1950 issue of U.S. News and World Report the chairman of the Foreign Relations Committee, replying to the question, "Do you think the suggestion that we abandon South Korea is going to be seriously considered?", stated,

I am afraid it is going to be seriously considered because I'm afraid it's going to happen, whether we want it to or not. I'm for Korea. We're trying to help her—we're appropriating money to help her. But South Korea is cut right across this line—north of it are Communists with access to the mainland—and Russia is over there on the mainland. So that whenever she takes a notion she can just overrun Korea just like she probably will overrun Formosa when she gets ready to do it. I hope not, of course. 9

Answering the next question, "But isn't Korea an essential part of the defense strategy?", Senator Conally seemingly wrote off United States interest in Korea's survival in saying,

No. Of course, any position like that is of some strategic importance. But I don't think it is very greatly important. It has been testified before us that Japan, Okinawa and the Philippines make the chain of defense which is absolutely necessary. And of course, any additional territory along in that area would be that much more, but it's not absolutely essential. 10

Conally's statements furthered speculation that the Truman administration's stance on United States Far Eastern policy as expressed first by Secretary Acheson was acceptable to the Congress and that both were prepared to accept the loss of the Republic of Korea and the Republic of China on Formosa.¹¹

Conally's statement was picked up by the English-language newspaper in Tokyo, the Nippon Times, and on May 3 in bold type there appeared on the front pages: "REDS WILL FORCE U.S. TO QUIT SOUTH KOREA, CONALLY PREDICTS."¹² In Washington Secretary Acheson "declined to say whether the United States might have to abandon South Korea to

Russia."¹³ In Seoul, Syngman Rhee declared, "Senator Conally must have forgotten that the United States has committed herself and cannot pull out of the Korea situation with honor."¹⁴

Though such authorities as Robert T. Oliver, Syngman Rhee's American advisor, was later to write in his book, Why War Came in Korea, that among the reasons for the Communist attack was that "American authoritative statements indicated that we would not defend Korea; the final policy speech prior to the attack by an American official occurred on June 19, when John Foster Dulles addressed the Korean National Assembly and implied United States aid in their efforts to resist Communist aggression. Dulles described the Korean people as

... in the front line of freedom, under conditions that are both dangerous and exciting ... you encounter a new menace, that of Soviet Communism ... which has seized in its cruel embrace the Korean people to the north of the 38th parallel and ... seeks by terrorism, fraudulent propaganda, infiltration and incitement to civil unrest, to engulf and discredit your new Republic ... You are not alone ... so long as you continue to play worthily your part in the great design of human freedom. 15

The day after arriving in Tokyo from Korea, Dulles after a meeting with MacArthur, "predicted 'positive action' by the United States to preserve peace in the Far East."¹⁶ Dulles, pressed for the meaning of "positive action", replied that the United States intended to "preserve international peace, security, and justice in the world-and that includes this part of the world as well as the so-called Western world."¹⁷ This appears as the final statement of official United States policy prior to the invasion of June 25, 1950.

Was the North Korean Attack A Surprise?

As I discussed Korean policy with my advisers in the

spring of 1948, we knew that this was one of the places where the Soviet-controlled Communist world might choose to attack. But we could say the same thing for every point of contact between East and West, from Norway through Berlin and Trieste to Greece, Turkey, and Iran; from the Kuriles in the North Pacific to Indo-China and Malaya.

Of course each commander believed that his area was in the greatest danger. It is obvious that the final decisions on the allocation of forces and material cannot be left to an area commander and must be made by the top-level command.

The intelligence reports from Korea in the spring of 1950 indicated that the North Koreans were steadily continuing their build-up of forces and that they were continuing to send guerilla groups into South Korea.

There were continuing incidents along the 38th parallel, where armed units faced each other.

Throughout the spring the Central Intelligence reports said that the North Koreans might at any time decide to change from isolated raids to a full-scale attack. The North Koreans were capable of such an attack at any time, according to the intelligence, but there was no information to give any clue as to whether an attack was certain or when it was likely to come. But this did not apply alone to Korea. These same reports also told me repeatedly that there were any number of other spots in the world where the Russians "possessed the capability" to attack. 18

As indicated by the above passage from his Memoirs, President Truman indicates knowledge of North Korean preparation for war. Yet statements made in publications of the State Department and the United Nations Commission on Korea shortly after the outbreak of the Korean War would seemingly refute President Truman's assertion that evidence was available to indicate North Korea's intention prior to its actual attack. The State Department in its White Paper issued in July 1950 labeled the North Korean action a "surprise attack."¹⁹ On June 26, 1950 the United Nations Commission on Korea in a report to the Secretary General, speaking of the South Korean forces, avowed "that they

were taken completely by surprise as they had no reason to believe from intelligence sources that invasion was imminent."²⁰ General Douglas MacArthur's biographer, John Gunther, in a manner accusatory of the South Koreans, the Americans in Korea, and the SCAP (Supreme Commander for the Allied Powers) in Tokyo describes the element of surprise as complete:

... on the morning of June 25, the North Koreans launched an attack by no fewer than four divisions, assisted by three constabulary brigades; 70,000 men were committed, and about 70 tanks went into action simultaneously at four different points, while an ambitious amphibious landing was successful. Ask any military man what all this means. To assemble such a force, arm and equip it, and have it ready to wheel into precalculated action over a wide front with perfect synchronization, on the appointed date, must have taken at least a month; most military men would say that it could not have been done in under six weeks or longer. Yet the South Koreans and Americans in Korea, to say nothing of SCAP in Tokyo, were taken utterly by surprise. They were as blankly astonished as if the sun had suddenly gone out. The North Koreans achieved complete tactical and even strategic surprise. It was more disgraceful than Pearl Harbor. Our eyes were shut, and even our feet were sound asleep.

No doubt this will all be investigated in good time. One point worth mention is that the United Nations Commission on Korea reported to Lake Success (on September 14) that United States Officers in Korea refused to accept at face value and in fact completely ignored well-documented warnings by South Korean intelligence of an impending attack a full six weeks before it occurred. 21

In answer to those who assert the North Korean attack was a surprise, an examination of evidence available prior to June 25 would seemingly refute their highly tenuous position. According to the September 14 report of the United Nations Commission on Korea, on three separate occasions the seriousness of possible future North Korean aggression was communicated to the United Nations Committee. In January 1950, the Chief of Staff of the South Korean Army "informed the committee

that he believed the aggressive plans of the North Korean authorities to be mature, and that it was only a matter of time before they would be put into action."²² Also within the report were figures detailing a build-up of North Korean forces to support his contention. A month later the Chief of Staff "stated that the North Korean forces possessed more powerful and more numerous artillery weapons than did the Army of the Republic of Korea."²³ Again detailed figures were supplied to support his statement. When on May 10 the South Korean Defense Minister reported at a press conference "that North Korean troops were moving in force toward the 38th Parallel and that there was imminent danger of invasion from the North,"²⁴ the United Nations Commission requested a hearing with the Korean Foreign Minister "to ask for information on the seriousness of the danger and the degree of imminence of the invasion, as envisaged by the Defense Minister."²⁵ This press conference was reported to the American public by the New York Times the following day: "Defense Minister Dihn Sung Mo warned South Korea today that invasion by Communist North Korea was imminent. Mr. Sihh said intelligence reports indicated the North Koreans were moving in force toward the South."²⁶ At the hearing requested by the United Nations Commission, detailed information was supplied by Korean Army intelligence officials disclosing extensive North Korean Army increases in personnel and equipment along the 38th Parallel. Following the formal hearing, two officers from the United Nations Advisory Group to the South Korean Army "substantially confirmed the information given by the Korean military authorities ... They did not, however, agree on the imminence of any danger and again expressed confidence in the ability of the Army of the Republic to handle the forces of the Northern regime in case of attack."²⁷

Further evidence that the United Nations Commission on Korea was aware of the imminent danger of conflict along the 38th Parallel was a report dated 24 June, just one day before the attack, not transmitted to the United Nations Security Council, however until June 29. What is significant about the report is its heading: "Following report dated 24 June from United Nations field observers submitted to Commission on their return from field trip along 38th Parallel commencing on 9 June to report development likely to involve military conflict is forwarded for information."²⁸

During this same period prior to the outbreak of hostilities in Korea, evidence was mounting within intelligence circles in the United States that a North Korean invasion was possible at any time. Immediately following the news of the North Korean attack, newspapermen at the Pentagon learned privately from a Department of Defense aide "that the United States expected the attack."²⁹ This spokesman based his conclusion upon "the fact that ships were ready to evacuate the families of American officers and others in South Korea as evidence that the invasion was not a surprise."³⁰ When newspapermen succeeded in contacting that same day Rear Admiral Roscoe H. Hillenkoetter, director of the Central Intelligence Agency, he stated that conditions "existed in Korea that could have meant an invasion this week or next."³¹ The day following the beginning of the war Admiral Hillenkoetter was summoned to appear before a private hearing of the Senate Appropriations Committee. There the Admiral produced a series of intelligence reports, the last dated 20 June, "to prove that he had not been taken unawares."³² Hanson Baldwin of the New York Times reported later that these intelligence reports indicated a "marked build-up by the North Korean People's Army

along the 38th Parallel beginning in the early days of June." At that time he reported that "light and medium tanks probably of Japanese manufacture, about thirty 122-mm Soviet-type field guns and other heavy equipment were assembled at the front, and troop concentrations became noticeable."³³

In view of the State Department labeling the North Korean aggression a "surprise attack" in its July 1950 White Paper, of special significance is the testimony of John D. Hickerson, Assistant Secretary for United Nations Affairs, before a routine hearing by the Senate Appropriations Committee on the State Department budget on June 5, 1951. Mr. Hickerson began by reiterating the position taken by the State Department in July 1950:

Mr. Hickerson: On the night of June 24, 1950, at 10:45 my telephone rang and I was summoned to the State Department and we had our first news of the Korean difficulty. The first person I telephoned when I got to the State Department was the head of this Office of Political and Security Affairs.

Senator McCarran: Did he not know about the Korean situation before that?

Mr. Hickerson: The attack, so far as I was concerned, came without warning, sir, and it was news to me.

Senator McCarran, armed with the information provided by Admiral Hillenkoetter before this same Committee just a year before, persisted in his questioning of Mr. Hickerson's statement that the attack "came without warning":

Mr. Hickerson: Mr. Chairman, we frankly had to improvise when the Korean thing came along. We did not have detailed plans for every spot in the world where there was likely to be trouble. We had gone as far as we could, sir.

Senator McCarran: I come back to the same proposition. This Appropriations Committee last year brought before it the head of the Central Intelligence Agency.

He testified as to what he had reported and gave us the report, which is today in the safe in the office of the clerk of this committee. That report was filed with the White House, with the State Department, and was filed with the Department of Defense, according to his testimony. So you were advised ahead of time. It is hard to say that you did not know what was coming.

Mr. Hickerson: That is correct.

Senator Ferguson then picked up the questioning, directing his efforts toward discovering what had been done in the State Department about these warnings:

Senator Ferguson: Did you have a plan laid out as to what you were going to do when you got notice of the attack?

Mr. Hickerson: We had done some thinking about that, sir, yes.

Senator Ferguson: Well, thinking is rather indefinite. What had you done on paper? What had you planned to do?

Mr. Hickerson: We had planned to take it to the United Nations for immediate action.

Senator Ferguson: Did you have a proposed resolution drawn up?

Mr. Hickerson: We did not have a proposed resolution drawn up on Korea, because we did not know when an attack might come.

Senator Ferguson: Then you did not have a plan.

Mr. Hickerson: We knew we were going to take it to the United Nations. We knew in general what we were going to say.

Senator Ferguson: That did not take much thinking because that was your department.

Mr. Hickerson: Yes. We had a skeleton of a resolution here first.

Senator Ferguson: What was the resolution you had in the office anticipating if this came that you would use?

Mr. Hickerson: It is based on earlier aggression. The first thing you do is tell them to stop it and go back where they came from. Surely we had that blocked out but only in very rough outline form. 34

Although it is clear that the element of surprise was present in a lesser degree in the North Korean attack than claimed by some immediately following the outbreak of hostilities, it is less clear why more substantial preparations were not undertaken by South Korean and American authorities to meet the impending attack. Primarily, this lack of foresight may be attributed to

... the American estimate of Soviet strategic intentions for some time prior to June 25 (which) included two important expectations. First, it was thought that there was no immediate danger of an armed attack upon South Korea, although some form of Communist action elsewhere in the world in the coming months was expected. Second, it was thought that the Politburo would not engage in overt forms of aggression which involved the risk of a general war for the present and for several years hence. 35

Accordingly, James Reston reported American policy to assume at that time, that:

... while the Russians would continue trying to gain their ends by indirect aggression through the Communist Parties, they would hesitate to use force, at least until they were at the top of their military strength, some time between 1952 and 1954.

... the Korean Communists' attack has forced reconsideration of this theory ... 36

and the Alsops reported:

Korea has knocked the basic assumption underlying American policy into a cocked hat. This assumption was that the Kremlin was not ready now, and would not be ready for some years, to risk a world war. This in turn means that Washington has been mistaken about Soviet capabilities and intentions. 37

It seems plausible to conclude from the evidence that though the timing of the attack was a surprise to American policy-makers in Tokyo and Washington, the fact that the attack occurred at all was no surprise

to anyone. It further seems apparent that even the timing of the attack was of no surprise to the South Koreans and the Americans in Korea, and would not have been a surprise to the policy-makers had they believed the intelligence reports emanating from the area of the 38th Parallel. During questioning before the Committee on Armed Services and the Committee on Foreign Relations conducting "an inquiry into the Military Situation in the Far East and the Facts Surrounding the Relief of General of the Army Douglas MacArthur from His Assignment to that Area," Secretary Acheson brought into the open the joint weewkly intelligence cable of March 10, 1950, from the Commander-in-Chief, Far East, which noted, "Report received that People's Army will invade South Korea in June, 1950." When told by Senator Bridges that "that was a pretty definite statement that they had word that the attack was coming in June," Secretary Acheson replied, "Pretty definite statement? They said a report was received they would attack in June. Then, the comment said, 'We don't believe this statement.'"³⁸

The Decision to Commit United States Forces

Seoul, June 25, 1950

According to Korean Army reports which are partly confirmed by Korean Military Advisory Group field adviser reports, North Korean forces invaded the Republic of Korea territory at several points this morning ... ³⁹

This assessment of the North Korean invasion of South Korea by the American Ambassador to the Republic of Korea, John Muccio, represents the initial notification to official Washington of the outbreak of war in Korea. With its arrival in Washington at 9:26 PM, EDT, on June 24, 1950, began the process of Presidential decision-making described by

Beverly Smith as a procedure in which "In casual retrospect, our entry into the Korean war appears as a hurried, sudden plunge," but actually represented a course chartered by the President of the United States within which he "moved into the conflict step by step, in a series of decisions spaced over the last week of June, 1950."⁴⁰

The officials most concerned with preliminary decision-making immediately assembled at the State Department. They included Dean Rusk, Assistant Secretary for Far Eastern Affairs; John D. Hickerson, Assistant Secretary for United Nations Affairs; and Philip Jessup, Ambassador-at-large. Contacting Secretary of State Acheson by telephone at his farm in nearby Sandy Spring, Maryland, Hickerson recommended requesting a meeting of the UN Security Council for the following morning, at which time the United States would call for a cease-fire. Acheson then notified President Truman, who was at his home in Independence, Missouri, of the situation and the instructions he had given to Rusk, Hickerson, and Jessup at the State Department. Truman agreed with his advisers' assessment that proper remedial action should be exercised by an emergency session of the Security Council and that the United States should assume responsibility for requesting the session Sunday morning, June 25 and at that time place a resolution before it calling for the cessation of hostilities.

Collaborating throughout the night by telephone from New York, United States Deputy Ambassador to the UN Ernest Gross and Hickerson in Washington worked up a draft resolution acceptable to Secretary Acheson. With President Truman's approval, Gross presented to a special afternoon session of the Security Council a draft resolution which,

Noting with grave concern the armed invasion of the Republic of Korea by armed forces from North Korea,

Determines that this action constitutes a breach of the peace,

- I. Calls upon the authorities in North Korea
 - (a) To cease hostilities forthwith; and
 - (b) To withdraw their armed forces to the 38th Parallel; and
- II. Requests the United Nations Commission on Korea
 - (a) To observe the withdrawal of the North Korean forces to the 38th Parallel; and
 - (b) To keep the Security Council informed on the execution of this resolution.
- III. Calls upon all Members to render every assistance to the United Nations in the execution of this resolution and to refrain from giving assistance to the North Korean authorities. 41

Following some revisions of the language of the United States draft resolution by the members of the Security Council, especially the substitution of the words "call upon the parties concerned," which conform to the requirements stated in Article 40 of the United Nations Charter that the Security Council not address itself to only one disputant, for the words in the original draft resolution of the United States, which called only "upon the authorities in North Korea," the amended resolution was passed at 5:45 PM, on June 25, 1950, by a vote of 9 - 0, with the Soviet Union, a permanent member, absent, and Yugoslavia abstaining.⁴²

This decision by President Truman and his policy-makers to take the North Korean invasion to the United Nations, a decision which was to be the first in a chain of several to follow, was considered by Glenn D. Paige

... to be the only reasonable course of action. There is no evidence that they considered any other alternative for meeting the crisis facing them, including that of doing nothing. Since the United States had previously dealt with the Korean problem within the United Nations and since the very government under assault had come into being under United Nations supervision, the policy-makers thought that it was only "natural" that the attack should be met within the United Nations

framework. Secretary Pace, for example, considered it to be "the only logical course." Furthermore, they felt an "obligation" to do so--an obligation stemming from the ideal of collective security and the desire to strengthen the United Nations as an instrument of peace. As Secretary Acheson explained a few days later, "... It was the view of the President and of the entire government of the United States that our first responsibility was to report this to the United Nations." 43

During his last conversation from Independence with Secretary Acheson, the President had ordered that his advisors from State and Defense be available the evening of the 25th at Blair House to confer with him upon his arrival from Missouri. From the State Department in addition to Secretary Acheson, there were Under Secretary Webb, Assistant Secretaries Hickerson and Rusk, and Ambassador Jessup. Representing the Defense Department were Secretary Johnson, Secretary Pace of the Army, Secretary Matthews of the Navy, Secretary Finletter of the Air Force, and from the Office of the Joint Chiefs of Staff, its Chairman General Bradley, Chief of the Army General Collins, Chief of Naval Operations Admiral Sherman and Chief of Staff of the Air Force General Vandenberg.

That first evening at the initial conference with his advisors, President Truman indicated that he preferred to hear everything that was to be said on the situation and planned to make no crucial decisions, but would act on information that warranted immediate attention."⁴⁴ This discussion was started with Secretary Acheson offering three recommendations:

1. General MacArthur should be authorized and directed to supply Korea with arms and other equipment over and above that already allocated under the Military Assistance Program.
2. The US Air Force should be ordered to protect Kimpo Airport during the evacuation of United States dependents

by attacking any North Korean ground or air force approaching it.

3. The Seventh Fleet should be ordered to proceed from the Philippines north and to prevent any attack from China on Formosa or vice versa. ⁴⁵

Following this, each man in turn was asked for his views and opinions. The military men around the table were asked, in particular, their opinions concerning the possibility of the Soviet Union allowing the crisis to escalate into a general war. Their collective opinion indicated little likelihood of this occurring; however, to reduce the probability even further, the wisdom of committing ground troops "under conditions then existing" was doubted.⁴⁶ President Truman was especially impressed by "the complete, almost unspoken acceptance on the part of everyone that whatever had to be done to meet this aggression had to be done. There was no suggestion from anyone that either the United Nations or the United States could back away from it. This was the test of all the talk of the last five years of collective security."⁴⁷ General Bradley expressed the opinion of all when he concluded that the United States "would have to draw the line somewhere" and it was against the Communist aggression in Korea that "the line ought to be drawn now."⁴⁸

President Truman accepted Secretary Acheson's first two recommendations;⁴⁹ however, he reserved final decision on appropriate orders to be issued to the Seventh Fleet upon its arrival at the Formosa Straits.⁵⁰ In addition he instructed Secretary Acheson to survey other possible areas the Soviets might strike and to prepare a statement on what action had been taken to date for his later presentation to Congress.⁵¹ Emphasizing the need for strict security because military movements would be involved, President Truman also ordered that MacArthur be directed to send a survey party to Korea to study further the situation there,

that Naval ships start moving from the West Coast, and that jet aircraft be sent to two small islands east of Formosa.⁵² Though President Truman had stated during the course of the meeting that he "did not expect the North Koreans to pay any attention to the United Nations" and therefore this "would mean that the United Nations would have to apply force if it wanted its orders obeyed,"⁵³ he cautioned "that the United States was working entirely for the United Nations and therefore would wait until the Security Council's resolution was flouted before taking further action."⁵⁴ Finally, President Truman "instructed the service chiefs to prepare the necessary orders for action against North Korea,"⁵⁵ and scheduled a second conference at Blair House for the following evening, Monday, June 26.

It appears from the foregoing discussion that President Truman intended to move with great caution, giving special attention to possible Soviet reactions to moves made by the United States. The tremendous risks involved were apparent to the President, and had prompted him to assert that he was not ready to make any "crucial decisions at that first meeting." What would occur in the space of approximately twenty-four hours to cause the President at the second meeting at Blair House to commit United States air and sea forces to the aid of South Korea before the Security Council had met for a second time and called for such action?

On Monday, June 26, the President made a brief noncommittal statement to the press and public, in which he expressed a general sense of right conduct for the world in which an "act of aggression ... cannot be tolerated by nations that support the United Nations Charter."⁵⁶ That the "situation in Korea deteriorated rapidly" was the assessment by every concerned man and agency including President Truman, who reported,

By Monday the reports from Korea began to sound dark and discouraging ...

... The Republic of Korea troops were no match for the tanks and heavy weapons of the North Koreans. Seoul, the capital of Syngman Rhee's government, seemed doomed; Communist tanks were reported in the outskirts of the city. Rhee moved his government to Taeger, about one-hundred and fifty miles to the south. 57

During the day the President had received a succession of reports and assessments by the military on the worsening situation in Korea, and from the Central Intelligence Agency he had received a briefing on other possible areas throughout the world that might soon experience Communist aggression. He received the appeal for aid from the Korean National Assembly,⁵⁸ and at 4:00 PM Ambassador Chang of South Korea arrived at the White House with an urgent plea, communicated to him earlier in the day by Syngman Rhee over the telephone, for more aid, in particular more aircraft, tanks and artillery. President Truman had General MacArthur's latest message in his hands:

... Piecemeal entry into action vicinity Seoul by South Korean Third and Fifth Divisions has not succeeded in stopping the penetration recognized as the enemy main effort for the past two days with intent to seize the capital city of Seoul. Tanks entering suburbs of Seoul. Gov't transferred to south and communication with part of KMAC opened at Taeger. Ambassador and Chief KMAC remaining in the city. FEC mil. survey group en route to Korea has been recalled. under this rapidly deteriorating situation.

South Korean units unable to resist determined Northern offensive. Contributory factor exclusive enemy possession of tanks and fighter planes. South Korean casualties as an index to fighting have not shown adequate resistance capabilities or the will to fight and our estimate is that a complete collapse is imminent. 59

Finally, the President was made aware of the latest telegraphic estimate by the United Nations Commission on Korea. This was as bleak as the others he had received during the day and reported little chance of North

Korea's paying any attention to the Security Council or the Commission's good offices:

North Korean advances have created dangerous situation with possibilities of rapid deterioration. Impossible estimate situation which will exist tomorrow in Seoul. In view Commission's past experience and existing situation Commission convinced North Korea will not heed Council resolution nor accept UNCOK good offices ... Danger is that critical operations now in progress may end in matter of days and question of cease-fire and withdrawal North Korean forces suggested Council resolution prove academic. 60

Meeting again at Blair House the night of June 26, was the same group that had assembled there the night before with the exception of Under Secretary Webb, whose place was taken by Deputy Under Secretary H. Freeman Matthews. Once again it was Secretary Acheson who, in response to the President's request for suggestions, put forward six recommendations:

1. The Air Force and Navy should give all-out support to the Korean forces, for the time being confining their efforts to south of the 38th Parallel.
2. The Seventh Fleet should be ordered to prevent an attack on Formosa, the Nationalists told not to attack the mainland, and the Fleet told to prevent their doing so, if necessary.
3. U.S. forces in the Philippines should be strengthened and aid to Philippine forces accelerated.
4. Aid to Indochina should be increased and we should propose to the French that we send a strong military mission.
5. If the President approved the foregoing, he should issue the statement I had prepared as directed and which included actions recommended.
6. At the Security Council meeting called for the next morning we should propose a new resolution (which Hickerson read) calling on UN members to give Korea such help as might be needed to repel the armed attack and restore peace in the area. 61

Of special significance in this meeting was this consideration:

During the discussion of Secretary Acheson's recommendations, not one of the President's advisers took the position that the United States should not take military intervention to save South Korea. There were difficulties and there were risks, but American refusal to repel the aggression would be nothing but "appeasement." And appeasement, as history has shown, would ultimately lead to war. Ever since their first awareness that the North Korean people's army had launched an invasion of the Republic of Korea, President Truman and some of his advisers had drawn three historical parallels from the fateful decade which had preceded the horror of World War II: Adolph Hitler's disdainful violent, piecemeal conquests; Benito Mussolini's rape of Ethiopia; and Japan's arrogant seizure of Manchuria. While sharing these historical memories, although differing slightly in the specific additional instances which the North Korean invasion called to mind, the conferees at once had identified it as a case of blatant "aggression." 62

During the meeting the President stated that the moment had arrived for briefing and consulting with congressional leaders. He directed Secretary Acheson and Secretary Johnson to meet the following morning with Scott Lucas, Majority Leader of the Senate; Sam Rayburn, Speaker of the House; and John W. McCormack, House Majority Leader. From the Senate Foreign Relations Committee there would be Chairman Conally of Texas; Thomas of Utah; Wiley of Wisconsin; and Smith of New Jersey. Invited from the Senate Armed Services Committee would be Chairman Tydings of Maryland and Bridges of New Hampshire. On the House side, from the House Foreign Affairs Committee Chairman Kee of West Virginia, Mansfield of Montana, and Eaton of New Jersey, and from the House Armed Services Committee Chairman Vinson of Georgia and Short of Missouri, were to be invited.

At the close of the meeting, President Truman says he

... directed the Secretary of Defense to call General MacArthur on the scrambler phone and to tell him in person what my instructions were. He was to use air and naval forces to support the Republic of Korea with air and naval elements of his command, but only south of the 38th Parallel. He was also instructed to

dispatch the Seventh Fleet to the Formosa Strait. The purpose of this move was to prevent attacks by the Communists on Formosa as well as forays by Chiang Kai-shek against the mainland, this last to avoid reprisal actions by the Reds that might enlarge the area of conflict. 63

Out in the hall after the meeting President Truman said of his directive to General MacArthur, "Everything I have done in the last five years has been to try to avoid making a decision such as I had to make tonight."⁶⁴ The President had committed the air and sea forces of the United States to aid the Republic of South Korea.

The following morning, Tuesday, June 27, the Congressional leaders were duly briefed of the actions taken by the United States thus far in the Korean crisis. Senator Wiley inquired whether the orders issued to General MacArthur the night before were in accord with UN resolutions adopted thus far. The President affirmed that his orders were in agreement with UN resolutions, and further stated that we were presenting that afternoon before the Security Council one further resolution recommending "such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security to the area"; a resolution which the United States was assured had the necessary support to be adopted.⁶⁵ Neither the propriety nor the need for such a decision by the President was questioned; in fact the course pursued met with general support from the Congressional leaders.⁶⁶ The record is not clear whether any Congressmen expressed opinions concerning the question whether the Congress should have been consulted prior to the President's committing air and sea forces or whether the commitment would then require Congressional approval, but a discussion of these points did take place at a similar meeting on Friday, June 30, after President Truman had committed ground troops without consulting Congress."⁶⁷

Immediately following the meeting with Congressional leaders, President Truman's statement of actions taken to meet the Communist aggression in Korea was given to the press and radio at 12:30 PM. In his statement the President declared that:

... The Security Council of the United Nations called upon the invading troops to cease hostilities and to withdraw to the 38th Parallel. This they have not done but on the contrary have pressed the attack. The Security Council called upon all members of the United Nations to render every assistance to the United Nations in the execution of this resolution. In these circumstances I have ordered United States air and sea forces to give the Korean Government troops cover and support. 68

At 10:45 PM of the same day, the Security Council adopted draft resolution (s/1508/Rev. 1) by a vote of 7 to 1, Yugoslavia voting against it, India and Egypt abstaining, and the Soviet Union absenting itself. The resolution recommended that

... The members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security to the area. 69

This was the statement of President Truman to the congressional leaders earlier in the morning and the press release read to the American people and the world given substance.

In effect President Truman had made the decision to commit United States air and sea forces to aid South Korea the night of June 26, and ordered the decision implemented that same night. The following morning, June 27, he had told congressional leaders that his orders were in accord with UN resolutions. The afternoon of the same day he had reported to the world that he had committed air and sea forces in response to a Security Council call for "all members of the United Nations to render every assistance to the United Nations in the execution of this resolution." However, "this resolution" (s/1508/Rev. 1) was not adopted until

more than ten hours later in the same day. Merlo J. Pusey calls the President's implication "that he had sent American forces into the war after the Security Council had called for military assistance to South Korea ... an inexcusable distortion." He continues,

No doubt he assumed that the appearance of going to war under the UN banner would take the curse off his unilateral action. When history is written without varnish, however, we must add to Mr. Truman's usurpation of the war power a deceptive statement which seemed to say that the United States had responded to a UN call for the use of military force when in fact the UN at that time had issued no such call. 70

F. B. Schick states that the "premature enforcement action of the United States government may have been prompted by considerations of military policy, particularly since it was certain that the American military intervention in the Korean conflict would be legalized belatedly by the Security Council."⁷¹ This would explain, of course, the confidence with which the President was able to point to a UN Resolution not yet adopted, but one he knew would assuredly be adopted, to explain actions taken by the United States Executive. Secretary Acheson recalled that the Security Council had originally been scheduled for Tuesday morning, June 27, but had been postponed to the afternoon "to enable the Indian representative to receive instruction. Thus he says, "some American action, said to be in support of the resolution of June 27 was in fact ordered, and possibly taken, prior to the resolution."⁷² Even had the Security Council met on the morning of June 27, we have the President's words that he ordered General MacArthur on the night of June 26 "to use air and naval forces to support the Republic of Korea."

The events following passage of the Security Council Resolution calling upon members of the United Nations to assist the Republic of Korea in repelling armed attack may be summarized rapidly. On Wednesday,

June 28, no new decisions were reached. On Thursday, military reports continued to indicate rapid deterioration of the Republic of Korea's Army's ability to resist total defeat. Mr. Truman, at Defense Secretary Johnson's suggestion, called for a meeting of his top advisers that evening at 5:00 PM. Johnson then put forward a directive that the State Department had concurred in earlier in the day. The directive would authorize General MacArthur to employ ships and aircraft under his command to strike military targets in North Korea, and also authorize him to commit service troops and limited infantrymen to protect an airfield and a port facility in the general area of Pusan.⁷³ Though this did not actually entail committing ground forces to the combat area, which was then 200 miles north of Pusan, President Truman was quite "troubled" by this portion of Secretary Johnson's proposal. He did, however, agree that it was a necessary action and therefore ordered the directive implemented. At the same meeting Secretary Acheson reported a telegram from Moscow received by the American Ambassador in Moscow which contained a response from Moscow to an American request to the Soviet Government to use its "influence with the North Korean authorities to withdraw their invading forces."⁷⁴ The significance of the telegram rested with the interpretation placed on it by Acheson and his advisors that the Soviet Union did not intend to intervene, which led Truman to comment "that means that the Soviets are going to let the Chinese and the North Koreans do the fighting for them."⁷⁵

Friday, June 30, brought the final crucial decision. Returning to Tokyo from a personal reconnaissance of the situation in Korea, General MacArthur's report of his findings was summarized by the Joint Chiefs of Staff as follows:

On 30 June, 1950, CINCFE informed the Joint Chiefs of Staff after a reconnaissance of the Korean battle are (sic) that the South Korean Army was in confusion. Supplies and equipment had been abandoned or lost. Without artillery, mortars, and antitank guns the most the South Koreans could hope to accomplish would be to retard the advance of the enemy. The South Korean Army was incapable of united action, and there was grave danger of a further break-through. CINCFE further stated that the only assurance of holding the Han River line and to regain lost ground would be through the commitment of United States ground combat forces into the Korean battle area. Accordingly, he stated, if authorized, it was his intention to move immediately a United States regimental combat team to the combat area in Korea as a nucleus of a possible build-up of two divisions from Japan for early offensive action in accordance with his mission of clearing South Korea of North Korean forces. 76

President Truman, when advised of General MacArthur's message by Secretary of the Army Pace, describes his reaction as follows:

The Secretary of the Army asked for my instructions. I told Pace to inform General MacArthur immediately that use of one regimental combat team was approved. 77

This occurred at 4:57 PM by telephone on June 30, 1950. The President, already up and shaved, is said by one source to have come to his decision with "only a flicker of hesitation,"⁷⁸ and without hesitation by another.⁷⁹ After an early morning meeting with his top advisors, President Truman "decided that General MacArthur should be given full authority to use the ground forces under his command."⁸⁰

Several interpretations of the significance of the North Korean attack existed during the period of crisis decision-making by the President and his top advisors from State and Defense. They are important only in so far as they allow us insight into the considerations that the participants thought important enough to warrant committing the country to war. Alexander L. George lists five interpretations given the attack by analysts, reporters, and most importantly by the President and his

staff. These interpretations are categorized by Mr. George as "diversionary move," "soft-spot probing," "testing," "demonstration," and "Soviet Far East strategy."⁸¹

Thus Mr. Truman would seemingly have adopted Mr. George's "testing" interpretation⁸² when he reflected back to his thoughts aboard the plane bringing him back to Washington on June 25, 1950:

... In my generation, this was not the first occasion when the strong had attacked the weak. I recalled some earlier instances:

Manchuria, Ethiopia, Austria. I remembered how each time that the democracies failed to act it had encouraged the aggressors to keep going further. Communism was acting in Korea just as Hitler, Mussolini, and the Japanese had acted ten, fifteen, and twenty years earlier. I felt certain that if South Korea was allowed to fall Communist leaders would be emboldened to override nations closer to our own shore. If the Communists were permitted to force their way into the Republic of Korea without opposition from the free world, no small nation would have the courage to resist threats and aggression by stronger Communist neighbors. If this was allowed to go unchallenged it would mean a third world war, just as similar incidents had brought on the second world war. It was also clear to me that the foundations and the principles of the United Nations were at stake unless this unprovoked attack on Korea could be stopped. 83

However, Beverly Smith is inclined to attribute President Truman's reasoning to Mr. George's "diversionary move" interpretation:⁸⁴

On helping South Korea, in the President's mind, there was no question of whether, but only of when, how and how much, bearing in mind that the Korean attack might be a screen for projected aggressions elsewhere. 85

Dean Acheson also subscribed to the "testing" interpretation as well as the "demonstration" interpretation, as is attested to by his words:

The attack on Korea was ... a challenge to the whole system of collective security, not only in the Far East, but everywhere in the world. It was a threat to all nations newly arrived at independence.

This dagger thrust pinned a warning notice to the wall which said: "Give up or be conquered."

This was a test which would decide whether our collective security system would survive or crumble. It would determine whether other nations would be intimidated by this show of force ...

As a people we condemn aggression of any kind. We reject appeasement of any kind. If we stood with out arms folded while Korea was swallowed up, it would have meant abandoning our principles, and it would have meant the defeat of the collective security system on which our own safety ultimately depends. 86

Secretary Johnson was even closer to the "demonstration" interpretation in his assessment of why United States policy took the direction that it did:

The fairest statement I can make as to the general approach was that if you let this one happen, others would happen in more rapid order; that the whole world look to the majesty of strength of the United States to see what we were going to do about the picture. The impression was abroad, very widespread, it seemed to us in the world as well as the United States we were not going to do anything about it. There were signs if we did nothing about it American stock would drop pretty low and where we needed friends on the Japan question we would not have friends. 87

John Foster Dulles adopted a "Soviet Far East strategy" interpretation, attributing the attack to the fear by the Soviets that America's "hopeful, attractive Asiatic experiment in democracy"⁸⁸ in Korea would disrupt their plans to spread Communism through Asia.

These then were some of the influences under which the decision to resist Communist aggression in the Republic of South Korea was made. Whether or not they were valid assessments at the time, decisions based upon them appeared correct to the individual responsible for the ultimate decision: President Truman, exercising the power to make war. And with this power Truman committed the nation to a war first under the pretext that it had been first requested by the United Nations and

then under the guise of a United Nations participatory force -- all under a power not even possessed by the Executive.

Was the Decision Legal?

Shortly following the President's decision to commit ground forces to the aid of South Korea, the Department of State issued a Memorandum dated July 3, 1950, defending the "Authority of the President to order the Armed Forces of the United States to repel the aggressive attack on the Republic of Korea."⁸⁹ The State Department sought to justify the President's action by asserting that "the President, as Commander-in-Chief of the Armed Forces of the United States, has full control over the use thereof," and "that the President's power to send the American Forces outside the country is not dependent on Congressional authority which has been repeatedly emphasized by numerous writers," and by several examples in history. In pointing to the "traditional power of the President to use the armed forces of the United States without consulting the Congress" which is necessitated by "interests" that the President as Commander-in-Chief may "protect by the employment of Armed Forces of the United States without a declaration of war," the Department of State makes a claim for the President based entirely on precedent and not on law.⁹⁰ Here the authors of the Memorandum are clearly formulating a doctrine of general, inherent Presidential power to enable the Executive to be alone capable and responsible in the conduct of all general affairs relating to foreign policy.⁹¹

The statutory law regarding the use of the Armed Forces of the United States in an action falling under the authority of the United Nations is quite plain. At the time the United Nations Charter was being

considered by Congress in 1945, the question whether mere membership in the organization constituted the advance authorization by Congress for the use of the American armed forces to preserve the peace and security of the world was discussed. The fear was expressed that Congressional approval of the Charter might carry with it an abrogation by Congress of its power to declare war. John Foster Dulles, appearing before the Senate Foreign Relations Committee hearing testimony regarding the United Nations Charter in 1945 made the following remarks:

Under our Constitution, the President, and the President alone, directs the current conduct of foreign affairs. But there can be no declaration of war except by Congress. That is our internal procedure, it will remain our internal procedure, and all the world knows that fact.

It may or it may not hereafter become useful to decide by legislation whether or not the use of our military contingent to enforce peace is the equivalent of a declaration of war. But surely we can better determine that when we know what it is that we are talking about. Today there is no military contingent. After the organization is established the organization may negotiate with the members for military contingents. That agreement for military contingents, so far as the United States is concerned, will be subject to the ratification and consent of the Senate. 92

Following his opening remarks, Mr. Dulles during the question and answer period engaged in the following exchange with Senator Milliken from Colorado:

Sen. Milliken: If I understood you correctly Mr. Dulles, I thought you said that the Senate will have an opportunity to ratify the special agreement having to do with our contribution of force and material.

Mr. Dulles: Yes, sir.

Sen. Milliken: Is that your opinion?

Mr. Dulles: That is not only my opinion, but it is expressly stated in the Charter that the agreements are subject to ratification by the states in

accordance with their constitutional processes.

Sen. Milliken: Then it is your opinion that to comply with our constitutional process, that separate agreement would have to come to the Senate for ratification?

Mr. Dulles: It is, and that was the view of the American delegation. I think there is no doubt whatever about that.

Sen. Milliken: Is there any doubt about that Mr. Dulles?

Mr. Dulles: No.

Sen. Milliken: And no disagreement of opinion about that?

Mr. Dulles: No. 93

With respect to the Charter of the United Nations, it is Article 43 that defines procedures to be followed by the membership when called upon by the Security Council to contribute military forces and other types of assistance for the maintenance of international peace and security. Agreements would be drawn up between members providing specific contributions for each situation that should arise, and subsection 3 of Article 43 further states:

The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council and groups of members shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

President Truman on July 28, 1945, the final day the Charter of the United Nations was to be debated on the floor of the Senate, caused to be read into the record a statement which he was particularly anxious to include in order to define his intentions concerning Article 43 to the Senate:

During the debate in the Senate upon the matter of the Senate's giving its advice and consent to the Charter of the United Nations, the question arose as to the method to be followed in obtaining approval of the special agreements with the Security Council referred to in Article 43 of the Charter. It was stated

by many Senators that this might be done in the United States either by treaty or by approval of a majority of both houses of Congress. It was also stated that the initiative in this matter rested with the President, and that it was most important to know before action was taken on the charter which course was to be pursued.

When any such agreement or agreements are negotiated, it will be my purpose to ask the Congress by appropriate legislation to approve them.

Provided, that nothing herein contained shall be construed as an authorization to the President by the Congress to make available to the Security Council for such purpose armed forces, facilities, or assistance provided for in such special agreement or agreements. 94

Clearly, this Act requires Congressional approval for agreements between the United States and the Security Council providing United States forces to the United Nations. Clearly this Act denies the President authority to furnish forces over and above those called for in agreements authorized by Congressional approval. And just as clearly, this Act was violated by the Executive in providing forces to repel the North Korean aggression against the Republic of Korea.

Truman: Decisive Leader

Today, no one can come to the Presidency of the United States really qualified for it. But he can do his best to become so. Mr. Truman was always doing his level best. He aspired to the epitaph reputed to be on an Arizona tombstone - "Here lies Bill Jones. He done his damndest." His judgment developed with the exercise of it. At first it was inclined to be hasty as though pushed out by the pressure of responsibility, and-perhaps so-by concern that the deliberateness might seem indecisiveness. But he learned fast and soon would ask, "How long have we got to work this out?" He would take what time was available for study and then decide ...

No one can decide and act who is beset by second thoughts, self-doubt, and that most enfeebling of

emotions, regret. With the President a decision was made was done with and he went on to another one. 95

Probably more than any other single crisis during his administration, the "ultimate decision"⁹⁶ made by Harry S. Truman as Commander-in-Chief to intervene with United States Armed Forces in the Republic of Korea reflects the guiding principle by which he conducted his Presidency: "The buck stops here." During the period from Saturday night, June 24, to Friday, June 30, the "buck" stopped on six separate occasions at Harry Truman's desk. Each decision would progressively restrict the President's range of choice until he finally reached the point where he must face squarely that final decision that is irreversible. Each decision, once adopted, committed the President to a next decision that offered fewer and fewer alternatives and was less and less retractable. And when this country is committed to that final, irreversible decision to make war with its Armed Forces, the opponent is also committed to a choice between two equally final, irreversible responses. It must meet the force with forces of its own or it must refuse to further commit its forces and adopt instead to a policy of appeasement. This normally is as unacceptable to a country as is the failure to meet an armed challenge in the first instance. A decision to meet fire with fire will with alarming frequency be met with more fire.

Harry Truman met his challenge with little hesitation, made his "ultimate decision" with much courage, and observed his course succeed, not without the assistance of good luck. Through all this the Congress and the people were excluded from the decision and when finally they were included it was by deception.

The first decision was made on Saturday, June 24. It was to adopt

a positive response through a resolution to be presented at an emergency session of the Security Council of the United Nations calling upon North Korea to cease hostilities and withdraw its armed forces to the 38th Parallel. No alternative to this decision was considered. At this point in time no thought was given to any possibility that a breakdown in the concept of collective security could occur. Yet at this time the intentions of the Soviet Union were unknown. The resolution that was drafted was to be presented to the Security Council as the logical and correct procedure to be followed in cases such as had just occurred. No precedent existed, nor could a predictable outcome be forecast. The President, however, never thought beyond the resolution, nor did he plan for its failure. It was right to present such a resolution; it was right that it should be adopted. An amended version of the resolution presented by the United States was adopted by a vote of 9 - 0 by the Security Council. No doubt here the luck that President Truman was to continue to experience throughout the crisis surfaced to an extent greater than at any other time during the succeeding days. The Soviet Union, because of a prior disagreement, had absented itself from the voting. No amount of speculation can arrive at conclusive answers to two questions asked over and over again since June 25, 1950. Had the Soviet Union been present at the Security Council, would it have vetoed the United States resolution of June 25, 1950? Had the Soviet Union vetoed the resolution, would President Truman have acted as he did without United Nations sanction? No one can and no one will answer these questions for historians. It is sufficient to say that President Truman recognized his initial luck, and made bold by his good fortune never questioned after that the wisdom of his boldness. Though audacious, his decision was supported by

sound rationale for the course of action that he subsequently chose to pursue.

The next decision was made Sunday night, June 25, at a meeting at Blair House. Truman's formula for decision-making, when practicable, consisted of listening to all opinions and recommendations that his advisors submitted before announcing his decision. At Blair House Sunday night opinion was not divided, and consequently the President's decision did not reflect the benefit provided by the adversary system of policy formation. Only one side was proposed, and only one side was discussed. Allowing something of a speculative nature to enter here, it would probably be conceded that President Truman had prior to the meeting determined upon a course of action that he preferred to follow, and only a strong argument could deter him from his course. No such argument emerged that night. The possible entry of the Soviet Union into the conflict was discussed, but summarily dismissed. It was decided to supply the Republic of Korea with aid in the form of ammunition and military supplies. Here then was the germination of a military commitment not as yet, however, irreversible. At the same meeting, a measure of ruminative fertilizer was added, when the President directed his service chiefs to prepare necessary orders for the eventual use of troops.

Precious little time passed before President Truman made his third decision. The possibility of reversal of the course now being followed by the President was to be doubted when on Monday, June 26, at a second meeting at Blair House, American naval and air units were committed to a direct combat support role of the Republic of Korea Army south of the 38th Parallel. On the basis of a message from General MacArthur and a

report by the United Nations Commission on Korea of the rapidly deteriorating situation in Korea, and once again encountering no adversary opinion, the President unhesitatingly took the United Nations one step closer to war. At this meeting, a draft resolution calling for the membership of the United Nations to render Korea what help it needed militarily to repel the North Korean attack was approved for presentation the following morning, Tuesday, June 26. This was the fourth decision.

On that morning the President encountered no opposition from Congressional leaders regarding the course to which he was committing the nation, possibly because in reply to a question from Senator Wiley he replied that his action was in accord with UN resolutions. He then issued to the press and radio a statement that can be characterized in no other way than as deceptive, unconscious though this may have been. Truman referred to his ordering of air and sea forces of the United States to aid the Republic of Korea as having been in response to a call from the Security Council to all members of the United Nations to give assistance to South Korea. Later it was pointed out that this statement preceded by more than ten hours the actual call from the Security Council, and later still that his decision the night before at Blair House to commit air and sea forces had been ordered executed twenty-four hours prior to Security Council action on the subject. It must be understood that timing did not concern Harry Truman. He was not a complicated man. If the events of the world failed to keep pace with Harry Truman's decision, damned with the world. He knew that eventually the resolution would be adopted by the Security Council; he was just one step ahead of them. At this point he was riding the crest of his confidence and courage; he saw a job that needed doing and decisions were his business.

... he loved to make decisions ... Characteristically he concentrated on the "here" and "now" in terms of benefitting a decision-machine, looking for what was to be decided, looking at what bore directly on the case, and tending to dismiss all else as interesting but irrelevant. Moreover, while he dealt with the decision next in line, the ones already processed and the ones that might come after were not on his mind ... The job he had to do, as Truman saw it, was to make decisions and take initiative; those were the duties of the boss and spokesman; so his perceptions told him. Mixed into these perceptions, perhaps guiding them, were Truman's private values; decisiveness was high upon his list. 97

As to Merlo Pusey's contention that President Truman's statement was "an inexcusable distortion" and "deceptive"⁹⁸ Jack Redding would reply,

What so many people failed to understand was that the President (Truman) rarely used circumlocution to gain his ends. He meant what he said. That is why so many pundits failed in looking behind to analyze the President's actions. They were always looking behind what he said and did, looking for an explanation other than the obvious. 99

Harry Truman was trying to deceive no one; he did not need to. He knew the actions he was taking were correct. He had no doubts of their being supported, because they were correct. He was moving fast, doing what he did best-dealing with crises. His mind was always one step ahead, one decision in advance of the remainder of those concerned with policy. However, the inescapable fact is that deception was in fact practiced by the President on the Congress and the people.

The fifth and sixth decisions occurred Friday, June 30. The sixth decision was actually an expansion of the fifth, which had already taken that final step, which experience shows to be irreversible. Early Friday morning President Truman authorized General MacArthur to use one regimental combat team and to commit all combat troops under his command at his discretion. We have already seen that President Truman did not hesitate to commit the ground forces of the United States. At this

point in time, he had known that eventually this would become necessary so he was fully prepared to implement a decision already formulated within his mind when the time came. He recognized that time when it did come, and unhesitatingly followed the course already outlined in his mind. He committed a nation to war, but he did so with courage-the rare courage of a military leader-trusting his convictions, but trusting too his luck. It is said of President Truman that it was his

courage that stands out in his most revealing decisions and commitments ... To the courage he added a gift of simplification, a knack of seeing issues divested of complication and irrelevancy, and of stating them in plain, blunt terms, without style but also without guile ...

Mr. Truman had to make many choices in situations in which there was no right way, but only an assortment of wrong ones-the situations proliferated by war and wars aftermath and increasingly typical of our age. It takes uncommon steadiness of mind to commit a nation to a choice between evils and, having made the choice, neither to misrepresent it nor to wallow in regrets and unnerving doubts. If any one thing seems more nearly certain than another about Harry Truman as President, it is that he never shrank from a necessary choice. 100

And it was this decisive President who "never shrank from a necessary choice" who further concentrated within the Executive the requisite power for deliberate deception. For by duplicating the action of his predecessor in committing the Armed Forces of the United States to war without consulting the Congress he was leaving to his successors an inheritance rich in the possibilities for deception. Power concentrated in the hands of one man, and especially the power to make war, never a power that easily lends to a popular decision, produces decisions made in private. And unpopular decisions made in private are rarely, if ever, aired in their true form in public.

Notes

¹Robert S. Hirschfield, "The Powers of the Contemporary President," The American President, ed. by Sidney Warren (Englewood Cliffs, New Jersey: Prentice Hall, Inc., 1967), p. 62.

²Charles E. Merriam, Four American Party Leaders (New York: The MacMillan Company, 1926), p. xii.

³Statement by General Douglas MacArthur, New York Times, March 2, 1949, p. 1.

⁴Dean Acheson, "Crisis in Asia - An Examination of U.S. Policy," Department of State Bulletin, 22 (January 23, 1950), 116.

⁵Ibid., p. 117.

⁶Dean Acheson, Present at the Creation (New York: W.W. Norton & Company, Inc., 1969), p. 358.

⁷Harry S. Truman, Years of Trial and Hope, Vol. 2 of Memoirs (Garden City: Doubleday & Company, Inc., 1956), pp. 329 - 30.

⁸"Continued Aid to Korea Requested," Department of State Bulletin, 22 (March 20, 1950), 454.

⁹U.S. News and World Report, May 5, 1950, p. 30.

¹⁰Ibid.

¹¹Glenn D. Paige, The Korean Decision (New York: The Free Press, 1968), p. 68.

¹²Nippon Times, May 3, 1950, p. 1.

¹³Nippon Times, May 5, 1950, p. 1.

¹⁴Ibid.

¹⁵I.F. Stone, The Hidden History of the Korean War (New York: Monthly Review Press, 1952), p. 17.

¹⁶New York Times, June 22, 1950, p. 2.

¹⁷The Times (London), June 23, 1950, p. 1.

¹⁸Truman, Years of Trial and Hope, p. 331.

¹⁹"United States Policy in the Korean Crisis," Department of State Publication 3922, Far Eastern Series 34, July 20, 1950, p. iii.

²⁰For text of UN doc. S/1507, See Appendix C, p. 353.

²¹John Gunther, The Riddle of MacArthur (New York: Harper & Brothers, 1951), p. 166.

²²The New York Times, September 15, 1950, p. 1.

²³Ibid.

²⁴Ibid.

²⁵Ibid.

²⁶The New York Times, May 11, 1950, p. 1.

²⁷The New York Times, September 15, 1950, p. 1.

²⁸For text of UN doc. S/1518, See Appendix C, p. 354.

²⁹The New York Times, June 26, 1950, p. 1.

³⁰Ibid.

³¹Ibid.

³²Stone, Hidden History, p. 4.

³³The New York Times, June 28, 1950, p. 1.

³⁴U.S., Congress, Senate, Committee on Appropriations, On State, Justice, Commerce, and the Judiciary Appropriation for 1952, Hearings, before the Appropriation Committee, Senate, 82d Cong., 1st sess., 1951, pp. 1086 - 87.

³⁵Alexander L. George, "American Policy-Making and the North Korean Aggression," World Politics, 7 (January, 1955), 210.

³⁶The New York Times, June 27, 1950, p. 1.

³⁷The New York Times, July 5, 1950, p. 1.

³⁸U.S., Congress, Senate, Committees on Foreign Relations and Armed Services, To Conduct an Inquiry into the Military Situation in the Far East and the Facts Surrounding the Relief of General of the Army Douglas MacArthur from His Assignment to That Area, Hearings, before the Committees on Foreign Relations and Armed Services, Senate, 82d Cong., 1st sess., 1951, p. 1991.

³⁹For text of cable sent by the American Ambassador to Korea, John Muccio, and delivered to State Department at 9:26 P.M., EDT, on June 24, 1950, See Appendix C, p.343.

⁴⁰Beverly Smith, "The White House Story: Why We Went to War in Korea," Saturday Evening Post, November 10, 1951, p. 22.

⁴¹For entire text of UN doc. s/PV 473, "Statement to the Security Council by the Deputy Representative of the United States to the United Nations (Cross)," June 25, 1950, See Appendix C, p.344.

⁴²For text of UN doc. s/1501, "Resolution Adopted by the Security Council, June 25, 1950," See Appendix C, p.348 . For further discussion bearing on the amending of the original U.S. draft resolution (UN doc. s/1497), see Edwin C. Hoyt, "The United States Reaction to the Korean Attack: A Study of the Principles of the United Nations Charter as a Factor in American Policy-Making," 55 Am. J. Int. L. 55 (January 1961), 45-76; F.B. Schick, "Videant Consules," The Western Political Quarterly, 3 (September, 1950), 311-325; Arthur V. Watkins, "War by Executive Order," The Western Political Quarterly, 4 (December, 1951), 533-549.

⁴³Paige, Korean Decision, pp. 98 - 99.

⁴⁴Smith, "The White House Story," p. 76.

⁴⁵Acheson, Present at the Creation, p. 406.

⁴⁶Ibid.

⁴⁷Truman, Years of Trials and Hope, p. 334.

⁴⁸Ibid., p. 335.

⁴⁹It is interesting to note that at approximately the same time that the decision to aid Korea with arms, ammunition and military supplies was being formulated by the United States, the Korean National Assembly was telegraphing the President and the Congress appealing for "effective and timely aid" and "your increasing support ...". "The President's order to General MacArthur had preceded these requests." (Arthur V. Watkins, "War by Executive Order," The Western Political Quarterly, 4 (December, 1951), p. 541. For text of message, See Appendix C, p. 350.

⁵⁰Acheson, Present at the Creation, p. 406.

⁵¹Ibid.

⁵²Smith, "The White House Story," p. 80.

⁵³Truman, Years of Trial and Hope, p. 335.

⁵⁴Edwin C. Hoyt, "The United States Reaction to the Korean Attack: A Study of the Principles of the United Nations Charter as a Factor in American Policy-Making," American Journal of International Law, 55 (January, 1961), 52.

⁵⁵Truman, Years of Trial and Hope, p. 335.

⁵⁶For text of statement made on June 26, 1950, See Appendix C, p. 349.

⁵⁷Truman, Years and Trial and Hope, pp. 336 - 337.

- ⁵⁸See note 49 this chapter.
- ⁵⁹Truman, Years of Trial and Hope, p. 337.
- ⁶⁰For text of UN doc. s/1503, see Appendix C, p.352.
- ⁶¹Acheson, Present at the Creation, pp. 407 - 408.
- ⁶²Paige, Korean Decision, pp. 173 - 174.
- ⁶³Truman, Years of Trial and Hope, p. 337.
- ⁶⁴Smith, "The White House Story," p. 80.
- ⁶⁵Ibid., p. 82.
- ⁶⁶Ibid.
- ⁶⁷Ibid.
- ⁶⁸For text of President's June 27, 1950 statement, See Appendix C, p. 351.
- ⁶⁹For text of UN doc. s/1511, "Resolution Adopted by the Security Council, June 27, 1950," See Appendix C, p.356.
- ⁷⁰Merlo J. Pusey, The Way We Go To War (Boston: Houghton Mifflin Company, 1971), pp. 91 - 92.
- ⁷¹F.B. Schick, "Videant Consules," The Western Political Quarterly, 3 (September, 1950), 315.
- ⁷²Acheson, Present at the Creation, p. 408.
- ⁷³Paige, Korean Decision, p. 245.
- ⁷⁴Smith, "The White House Story," p. 88.

⁷⁵Ibid.

⁷⁶Paige, Korean Decision, p. 254.

⁷⁷Truman, Years of Trial and Hope, p. 343.

⁷⁸Eric F. Goldman, The Crucial Decade - 1945-1955 (New York: A.A. Knopf, 1951), p. 168.

⁷⁹Smith, "The White House Story," p. 88.

⁸⁰Truman, Years of Trial and Hope, p. 343.

⁸¹Alexander L. George, "American Policy-Making and the North Korean Aggression," World Politics, 7 (January, 1955), 211 - 215.

⁸²"...if the anti-Communist forces failed to resist, then further Communist aggressions would quickly follow elsewhere in the world. In this respect, the 'testing' interpretation differed from the 'soft-spot probing' thesis, which did not imply such dire consequences if the non-Communist powers failed to resist the Korean aggression." George, "American Policy-Making," 213.

⁸³Truman, Years of Trial and Hope, p. 333.

⁸⁴The fact that American policy-makers had been alerted to the possibility of a series of Communist actions at various points throughout the world, but not to the attack against South Korea, may have encouraged some of them to suspect that the North Korean attack was a diversionary one. George, "American Policy-Making," 211.

⁸⁵Smith, "The White House Story," p. 76.

⁸⁶U.S., Congress, Senate, Military Situation in the Far East, 82d Cong., 1st sess., 1951, p. 1715.

⁸⁷Ibid., p. 2585.

⁸⁸New York Times, July 2, 1950, p. 1. (reporting a speech made by Dulles on July 1).

⁸⁹"Authority of the President to Repel the Attack in Korea," Department of State Bulletin, 23 (July 3, 1950), 173.

⁹⁰Ibid., pp. 173 - 177.

⁹¹See Chapter I.

⁹²U.S., Congress, Senate, Committee on Foreign Relations, The Charter of the United Nations, Hearings, before the Committee on Foreign Relations, Senate, 79th Cong., 1st sess., 1945.

⁹³Ibid.

⁹⁴Public Law 264, 79th Congress, 1st Session (59Stat. 619), as amended by Public Law 341, 81st Congress, 1st Session (63Stat. 734).

⁹⁵Acheson, Present at the Creation, pp. 730 - 31.

⁹⁶Article II, Section 2 of the Constitution, which states: "The President shall be Commander-in-Chief ..." endows the President with the power to make the "Ultimate Decision," according to E.R. May. E.R. May, The Ultimate Decision, (New York: George Braziller, 1960).

⁹⁷Richard E. Neustadt, Presidential Power (New York: John Wiley and Sons, Inc., 1960), pp. 172 - 175.

⁹⁸Quoted on p.130, this text.

⁹⁹Jack Redding, Inside the Democratic Party (New York: Bobbs-Merrill, 1958), p. 133.

¹⁰⁰Lewis W. Koenig, ed., The Truman Administration (New York: New York University Press, 1956), pp. 9 - 10.

CHAPTER IV

JOHNSON AND THE TONKIN GULF: A CASE STUDY IN CALCULATED DECEPTION

Introduction

Then a few minutes before midnight, the bridge gives Park a range reading from CIC. "The firmest target we've had all night," the voice tells him. Park hastily directs the gun-control radar toward the area of the contact.

"It was a damned big one, right on us. No doubt about this one," he says. "About 1500 yards off the side, a nice fat blip." Park asks for the "firing key" - that is, for control of the triggering device on the five inch gun mounts - and for permission to fire. "Open fire!" is the response. Park tells what happened:

"Just before I pushed the trigger I suddenly realized, That's the Turner Joy. This came right with the order to open fire. I shouted back, 'Where is the Turner Joy?' There was a lot of yelling of 'Goddamn' back and forth, with the bridge telling me to 'fire before we lose contact,' and me yelling right back at them. (I really wasn't thinking about what I was saying.)

"I finally told them, 'I'm not opening fire until I know where the Turner Joy is.' The bridge got on the phone and said, 'Turn on your lights, Turner Joy.'

"Sure enough, there she was, right in the cross hairs. I had six five-inch guns right at the Turner Joy, 1,500 yards away. If I had fired, it would have blown it clean out of the water. In fact, I could have been shot for not squeezing the trigger." 1

Patrick N. Park, United States Navy
aboard the USS Maddox, August 4, 1964

For all I know, our Navy was shooting at whales out there. 2

President Lyndon B. Johnson
August 4, 1964

Strange words from a President who had on August 4, 1964 spoken gravely to the American Nation,

My fellow Americans, as President and Commander-in-Chief, it is my duty to the American people to report that renewed hostile action against United States ships on the high seas in the Gulf of Tonkin have today required me to order the military forces of the United States to take action in reply.

The initial attack on the destroyer Maddox on August 2 was repeated today, by a number of hostile vessels (whales?) attacking two U.S. destroyers with torpedoes. 3

But they are not so strange if we go back to the beginning and trace and examine the way in which the entire deception was calculated and played out by the President and his immediate military and security advisors.

There are two stories to be told about the attacks on the Maddox and the Turner Joy in the Gulf of Tonkin. One is the story that was available to Congress and the people at the time of the attacks and in the months after. But this is not the important story and therefore it is relegated to Appendix D. The second story is a study that weaves fragments of information into a net of deception. It is important and is told here.

34-Alpha Operations and DeSoto Patrols

On February 1, 1964 the United States entered a new phase in its Vietnam policy. It would be some time after that date that the Congress or the American people would learn even the general policy of this new phase. On that date President Johnson directed that a covert operation entitled 34-Alpha be implemented.⁴ Actually, this program traces its origin to May of 1963 when the JCS directed CINCPAC to prepare a plan for GVN (Government of Vietnam) "hit and run" operations against

NVN (North Vietnam). Though the operations were to be carried out "with U.S. military material, training and advisory assistance," they were to be "non-attributable." The final MACV-CAS (Military Assistance Command Vietnam-Cover for CIA in Vietnam) plan, designated OPLAN 34-Alpha, provided for "selected actions of gradual scope and intensity to include commando type coastal raids."⁵

For these operations the CIA bought eight patrol boats from Norway. Capable of speeds above 50 knots and armed with machine guns and 40-mm cannon, these boats were ideal for "hit and run" operations. Crews consisting of Vietnamese and foreign mercenaries were trained by United States personnel from the CIA or on detached duty from the Navy.⁶

United States military intelligence aided the South Vietnamese in the selection of targets. Targets were required to conform to directives authorizing 34A operations, and in mid-July the first operational orders were drafted by advisors working from United States aerial photography. The first targets selected were a radar station on Hon Me and a communications transmitter on Hon Ngu. Both were islands playing an active role in Hanoi's sea infiltration program. The raids were to be carried out at the end of July.⁷

Three and a half years after his first testimony before the Senate Committee on Foreign Relations on the extent of United States participation in the training, supplying and execution of South Vietnamese operations against North Vietnam in 1964, Secretary of Defense McNamara was still denying before the Committee in February 1968 any United States participation beyond supplying "some U.S. personnel" in training and "some of the equipment."

The Chairman: Mr. Secretary, would you describe the organization, the extent of U.S. participation in

South Vietnamese operations against the North during 1964?

Secretary McNamara: I can't describe the exact organization although I will be happy to try to obtain the information for you.

The operations of the South Vietnamese against the North were carried out by South Vietnamese personnel, utilizing to some degree U.S. equipment. The boats, as I think I stated before this committee in August 1964, were, I believe, wholly supplied by the United States. I was going to say, in part; I think they were wholly supplied by the United States.

The United States was informed of the operations to insure that they did not interfere with patrols of the kind that we are describing now.*

I believe, also, some U.S. personnel may have trained, or participated in the training of some of the South Vietnamese personnel participating in the operations.

The operations, however, were under the command of the South Vietnamese and were carried out by the South Vietnamese. There were no U.S. personnel participating in it, to the best of my knowledge.

The Chairman: Do you recall, what did America do beyond training and supplying the equipment, do you know? You should know.

Secretary McNamara: No. In the first place, I don't believe we carried on all the training, although I think there were some U.S. personnel participating in it.

In the second place, we did provide some of the equipment, but I don't believe we provided all of it.

Thirdly, we were informed of the nature of the operations but we did not participate in them and we did not command them. 8

Anthony Austin was to explain Secretary McNamara's continued denial in 1968 of United States command of 34-Alpha operations as "simply the cover story-and protecting a mission's cover is a form of lying the national-

*The patrol, code named DeSoto, being executed by the USS Maddox when it was attacked.

security managers employ without notable discomfort, even against Congress."⁹

Even as the 34-Alpha operations were being prepared for execution, President Johnson was approving a Naval cover electronic intelligence mission as part of a program code-named DeSoto. There had been two other DeSoto patrols in the Gulf of Tonkin, one in 1962 and one in 1963. In March, 1964 a DeSoto patrol had been conducted by the destroyer Craig but had not been effective because of bad weather.¹⁰ So on July 15 the Joint Chiefs of Staff ordered the fourth mission in the DeSoto series. Each previous mission had been generally a one-ship patrol along the Sino-Soviet coast to collect information on both "military and civil activity of the Asiatic Communist bloc." Of course, specific intelligence requirements varied from mission to mission.¹¹ The mission assigned to Destroyer Division 192, commanded by Captain John J. Herrick, by Vice Admiral Roy L. Johnson, commander of the Seventh Fleet, repeated the general geographic limitations of the DeSoto patrol series: "The CPA (closest point of approach) to the Chicom (Chinese Communist) coast is 15NM (nautical miles). CPA to the North Vietnamese coast is 8NM. CPA to North Vietnamese islands in 4NM." The order continued:

The primary purpose of this patrol is to determine DRV (Democratic Republic of Vietnam) coastal activity along the full extent of the patrol track.

Other specific intelligence requirements are as follows:

- a. Location and identification of all radar transmitters, and estimate of range capabilities;
- b. Navigational and hydro information along the routes traversed and particular navigational light characteristics, landmarks, buoys, currents, and tidal information, river mouths and channel accessibility;
- c. Monitoring junk force with density of surface traffic pattern;

d. Sampling electronic environment radars and navigation aids;

e. Photography of opportunities in support of above. In addition include photographs as best detail track would permit of all prominent landmarks and islands, particularly in the vicinity of rivers and built-up areas; conduct coastal radarscope photography by ship which is transmitting from Point A, which is the end of the mission. 12

On July 30, 1964 Operation 34-A patrol boats left Da Nang for attacks against Hon Me and Hon Ngu. Both attacks were executed by the South Vietnamese on July 31. That same day the USS Maddox reported sighting Soviet P-6 craft, which were later identified as the South Vietnamese craft returning from their mission. On August 1, the USS Maddox, now carrying out its mission, approached to within 13 miles of Hon Ngu and to within 4 to 6 miles of Hon Me. On August 2 the USS Maddox was attacked by three PT craft.¹³ On August 3, Captain Herrick, aboard the Maddox, suggested the DeSoto patrol be terminated. Admiral Ulysses Grant Sharp, United States Commander in the Pacific, replied tersely:

1. Termination of DeSoto patrol after two days of patrol ops (operations) subsequent to Maddox incident does not in my view adequately demonstrate United States resolve to assert our legitimate rights in these international waters.

2. Accordingly, recommend following adjustments in remainder of patrol schedule ... in order to accommodate COMUSMACV (Commander, United States Military Assistance Command Vietnam) request that patrol ships remain north of LAT (latitude) 19-10 north until 060600 H to avoid interference with 34-A Ops. 4 August patrol from Point Delta to Charlie remain north of 19-10 North ...

The above patrol will:

a. Clearly demonstrate our determination to continue these operations.

b. Possibly draw NVN PGM's to northward away from area of 34-A ops.

- c. Eliminate DeSoto patrol interference with 34-A
ops. 14

By this time the Turner Joy had been ordered to join the Maddox on patrol. At this point the attitude of Herrick's superiors is clearly indicated by a message sent to him just prior to recommencing the patrol by his immediate commander, Rear Admiral R. B. Moore, commanding the Ticonderoga's Task Force 77:

It is apparent that DRV has thrown down the gauntlet and now considers itself at war with the United States. It is felt that they will attack U.S. forces on sight with no regard for cost. U.S. ships in Gulf of Tonkin can no longer assume that they will be considered neutrals exercising the right of free transit. They will be treated as belligerents from first detection and must consider themselves as such. DRV PTs have advantage, especially at night, of being able to hide in junk concentrations all across the Gulf of Tonkin. This would allow attack from short range with little or no early warning. 15

Even before this, the Joint Chiefs of Staff recognized the danger in assigning to a DeSoto patrol responsibility in the Gulf of Tonkin.

Approving the patrol, they went on to advise Admiral Sharp:

- a. Last DeSoto patrol in Gulf of Tonkin was made in March. Weather at that time greatly precluded visual intelligence collection.
- b. U.S. has stepped up assistance to RVN including stationing of CVA TG (the task group including the carrier Ticonderoga) at mouth of Gulf of Tonkin.
- c. There have been considerable articles in news media discussing possibility of action against NVN.
- d. Activity in 34-A operations has increased. 16

To this day the confusion of August 4, 1964 continues. That the Maddox and Turner Joy reported an enemy attack is clear. That on the same day President Johnson went before the American people and reported an attack by "hostile vessels" against the Maddox and Turner Joy is clear. That Secretaries Rusk and McNamara and General Wheeler came to

Room S-116 of the Capitol building on August 6, 1964 armed with President Johnson's Tonkin Gulf Resolution is clear. That they convinced the combined Foreign Relations and Armed Services committees with the exception of one member of the grave injustice done to the United States and therefore the need for such a resolution is also clear. It was Senator Wayne Morse, supplied by an informant from the Defense Department with certain facts not brought out in general testimony before the committee,¹⁷ who began to rob the situation of its ordered clarity. And it was Secretary McNamara who, in replying to charges made by Senator Morse, issued what was to be the first in a long series of deceptive statements on the facts surrounding the incidents in the Gulf of Tonkin by saying:

Our Navy played absolutely no part in, was not associated with, was not aware of, any South Vietnamese actions, if there were any. I want to make that very clear to you. The Maddox was operating in international waters, was carrying out a routine patrol of the type we carry out all over the world at all times. It was not informed of, was not aware of, had no knowledge of and so far as I know today has no knowledge of any South Vietnamese actions in connection with the two islands, as Senator Morse referred to. 18

This was Secretary McNamara's testimony in spite of a message sent to Admiral Sharp from the Joint Chiefs of Staff stating clearly, "Activity in 34-A operations has increased,"¹⁹ and a message from Admiral Sharp to Captain Herrick referring specifically to the Maddox patrol, that it will, "(b) possibly draw NVN PGMs to northward away from area of 34-A Ops; (c) eliminate DeSoto patrol interference with 34-A Ops."²⁰ Three and one-half years later in testimony before the Senate Committee on Foreign Relations Secretary McNamara referred to his testimony on August 6, 1964:

That statement remains entirely accurate. I can confirm today that neither the ship commanders nor the embarked task group commander (Herrick) had any knowledge

of the South Vietnamese action against the two islands or of any specific South Vietnamese operations against the North. Higher Naval commanders were made aware of the operations by Commander, U.S. Military Assistance Command, Vietnam, in order to avoid mutual interference, or confusion between our patrols and these operations.

Throughout the patrol conducted first by the Maddox alone and later by the Maddox and the Turner Joy, the U.S. destroyers were directed to remain in waters which would keep them from becoming operationally involved with the South Vietnamese activity ... The task group commander knew only that certain South Vietnamese naval operations were periodically carried on in the area. He had no detailed knowledge of their type or of where or when they would be conducted. Indeed, his lack of knowledge was such that he mistakenly identified the South Vietnamese craft returning from their operation of July 31 as Soviet P-6 class boats. 21

Here the Secretary is no longer claiming that "Our Navy ... was not aware of" South Vietnamese operations against the North. Though higher naval commands knew of such operations, McNamara continued his claim that the "task group commander (Herrick) had (no) knowledge of the South Vietnamese action against the two islands or of any other specific South Vietnamese Operations against the North." And this in spite of Herrick's report of August 040630 hours to Fleet Headquarters.

A. Evaluation of info from various sources* indicates that DRV considers patrol directly involved in 34-A ops. DRV considers United States ships present as enemies because of these ops and have (sic) already readiness to treat us in that category.

B. DRV are very sensitive about Hon Me. Believe this is PT operating base, and the cove there presently contains numerous patrol and PT craft which have been repositioned from northerly bases. 22

This report, clearly linking DeSoto patrol being conducted by Maddox to 34 Alpha ops being conducted in the same vicinity by the South Vietnamese,

*Based on information from North Vietnamese radio messages intercepted by the Maddox during 34-A attack by South Vietnamese against radar station on Cap Vinh Son and security post off Cua Ron, August 040030 hours, which linked the Maddox to the South Vietnamese attack.

is evidence that Captain Herrick did in fact know of the planned execution of 34-Alpha operations. If this be true, as is indicated by the evidence, then the naval commanders referred to by McNamara,²³ who had, according to the Secretary, heeding Admiral Sharp's 10 July message to them to "contact COMUSMACV for any additional intelligence required for prevention of mutual interference with 34-Alpha operations and such communications arrangements as may be desired,"²⁴ knowingly placed the Maddox patrol route close to and at times in the same area that the South Vietnamese were conducting 34A operations. That this was indeed the case was to Herrick obvious when he received Sharp's message that his new patrol route was designed to "Possibly draw NVN PGMs to northward away from area of 34A ops."²⁵ And yet when asked in July 1968 about his message to Fleet Headquarters linking the Maddox patrol to the 34A operations in the minds of the North Vietnamese, he replied:

Well, when you feel that you are on the spot, and you're the primary source of intelligence, and also you feel the reason they sent you along is probably to use your head a little bit, and give an opinion, or you wouldn't be there. So, we tied in a lot of things, and probably tied in a lot of things that shouldn't have been in there. And people who had the time, knowing other intelligence and so forth, would probably not have said that. 26

Perhaps Captain Herrick's argument that there did not exist at the time any solid basis for his having concluded that the North Vietnamese connected the Maddox with 34-Alpha operations is true, though intercepts either indicated a connection or they didn't, but certainly for Captain Herrick to be able to send such a message he must have known the existence of such operations. Yet McNamara in testimony in 1964 and again in initial testimony to the Senate Foreign Relations Committee in 1968 said he did not. However, under further questioning the Secretary begins to modify his initial statements before the committee in 1968 somewhat:

The Chairman: Well, on that point, there is one cable which shows the following, and I quote from a cable to the Maddox:

"The above patrol will (a) clearly demonstrate our determination to continue these operations, (b) possibly draw NVN PGMS to northward away from the area of 34A operations, (c) eliminate DeSoto patrol interference with 34A operations."

It is unusual that, having received that cable, that the Maddox did not know what 34A was.

Secretary McNamara: The Maddox did know what 34A was, no question about that. But Maddox was not associated with 34A, was not playing a part of it, was not planning to draw forces away from it.

Senator Morse: I thought you said they did not know anything about it.

Secretary McNamara: Now wait a minute. I did not say they did not know anything about it.

Senator Morse: You said "were not aware of ..."

Secretary McNamara: They were not aware of the details, is what I said, of the attacks, as to location, or as to time, and unless one is aware of that you cannot properly plan a diversionary effort. 27

If this be true, why then would Admiral Sharp believe that Captain Herrick had sufficient knowledge of 34A operations in his area of patrol to know and accept the intended diversionary tactic stated by Admiral Sharp's message: "possibly draw NVN PGMS to northward away from the area of 34A operations"? And finally, even with the benefit of intercepts of North Vietnamese radio, how would Captain Herrick have known that the Maddox might possibly interfere with 34A operations²⁸ unless he had some detailed knowledge of what they were and where they were taking place? At this point McNamara, maintaining that Captain Herrick knew no details of 34A operations in his area, uses this absence of information as to detail as the reason that he

could not come to such a conclusion as he had:

Secretary McNamara: Two points: First, we can find no basis for the commander making this statement, that the DRV considered the DeSoto patrol directly involved with 34A operations.

Second, Herrick himself now states he can recall no basis for coming to that conclusion.

Third, the PT boat officer that we captured and interrogated in July 1966 told his interrogators that it was clear in his mind that the DeSoto patrol was separate from 34A operations.

The Chairman: Well, you are not saying this cable was not sent.

Secretary McNamara: I simply stand on what I said, Mr. Chairman. Of course the cable was sent.

The Chairman. You are not saying it was not sent.

Secretary McNamara: But I am saying that it is a complete distortion of the fact to leave the record indicating that the commander of the Maddox task force had any basis whatsoever for believing that North Vietnam confused 34A and DeSoto. He did not have that basis. He now says that he did not have the basis, and a North Vietnamese captured since that time states that the North Vietnam distinguished between the two operations. 29

Or perhaps it was Herrick's knowledge of detail that led him to just such a conclusion.

So, McNamara, who in 1964 had denied that the Navy had any knowledge at all of 34A operations, was saying in 1968 that not only did the Navy have complete detailed knowledge of 34A operations, but Captain Herrick also knew all but the detail of such operations. There is even some doubt that with this statement the entire truth emerged in 1968. However, 1968 or 1980 is too late for the truth that was necessary in August 1964 prior to the adoption by the Congress of the Tonkin Gulf Resolution.

A Second Attack at Sea?

Commander Robert C. Barnhart, Jr., commanding officer aboard the Turner Joy, was to say later of the night of August 4, 1964, "Usually you could see the silhouette of the other ship. It was so dark that night I couldn't see the Maddox in front of me."³⁰ And Sonarman Patrick Park aboard the Maddox remembers the night being, "as black as being three miles back in a cave without a candle. You could see the Turner Joy's running lights, and the phosphorescence of our wake, but only when you looked right down on it."³¹

Beginning in late afternoon of the 4th, ECM (Electronic Counter Measure) equipment aboard the Maddox indicated that she was being contacted by surface-search radar. Then at about 7:40 PM surface-search radar aboard the Maddox picked out four or five "skunks" (unidentified objects) thirty-six miles in front of the present heading the patrol was following. Stankevitz, a radarman on duty aboard the Maddox described the contacts as "moving fast ... You'd have beautiful pips for a while and then they'd disappear." Stankevitz added, "It was a pretty poor night for radar."³² Aboard the Turner Joy, the radar was picking up nothing.

It was shortly after that the Maddox intercepted a radio message indicating that a North Vietnamese attack against the patrol was imminent.³³ Senator Gore, in further questioning Secretary McNamara about this message, states that though he did "not in any sense question your patriotism or your sincerity ... I feel that I have been misled, and that the American people have been misled."³⁴ Referring to McNamara's prepared statement in which he stated, "intelligence reports received from a highly classified and unimpeachable source reported that North

Vietnam was making preparations to attack our destroyers with two Swatow boats and with one PT boat if the PT could be made ready in time."³⁵

Senator Gore saying he had no question about this sentence, "except the characterization of the source as 'highly classified and unimpeachable'" went on to read the second sentence,

"The same source reported, while the engagement was in progress on August 4, that the attack was underway."

I submit, Mr. Secretary, you have cited nothing from the intercepted message to support that.

Secretary McNamara: Let me put in at this point in the record, if I may, the four messages, starting with the first at (deleted) indicating there were two objectives, enemy attack vessels, located or located within 3,000 yards of them; and the second message which stated that --

Senator Gore: Directing them to make ready for military operations.

Of course, Senator Gore's point here is that a message directing someone to make ready for military operations could as easily have been referring to defensive operations as offensive operations. Herrick says, "We picked up an order. It told us what type of boats they'd be. The impression you would get was that there was going to be another attack."³⁷

But who attacked whom? As Secretary McNamara described the action in his prepared statement before the Senate Foreign Relations Committee in 1968, the Maddox and Turner Joy fired first at radar contacts:

Shortly after 9 PM, both ships' radars held contacts approximately 14 miles to the east. These contacts were on course 160, speed 30 knots. At that time the two U.S. ships were approximately 60 miles from the North Vietnamese coast.

At about 9:39 PM, both Maddox and Turner Joy opened fire on the approaching craft when it was evident from their maneuvers that they were pressing in for attack positions. At about this time, the boats were at a range of 6,000 yards from Maddox when the radar tracking indicated that the contact had turned away

and begun to open in range. Torpedo noises were then heard by the Maddox's sonar. A report of the torpedo noise was immediately passed to the Turner Joy by intership radio and both ships took evasive action to avoid the torpedo. 38

Herrick describes the action differently. The "boat which was closest to the Turner Joy approached to about 9,000 yards ... then made a turn-away as it fired a torpedo or torpedoes. We immediately took it under fire."³⁹ And Commander Earnhart aboard the Turner Joy remembers that when radar contact indicated about 4,000 yards he gave the order to fire, and "almost simultaneously I got a report from the Maddox: 'Torpedo in the water.'"⁴⁰ Equally as unclear as who commenced firing is the question: Was there, in fact, anyone firing back at the Maddox and Turner Joy?

Captain Herrick says of that first radar contact,

I've thought all these years about that contact. The best evidence I have, based on its rate of speed on the consistent pattern when it was plotted in, proved to me conclusively, on the basis of my experience, that it couldn't have been anything but a torpedo boat. 41

As for the first torpedo, "The boat made a typical firing run at the Joy. When it got close enough it made that turn, when you cut away as you fire your torpedo. And just then the Maddox's sonar reported a torpedo in the water."⁴² It was this first torpedo that McNamara in his prepared statement in 1968 reported four of the Turner Joy's topside personnel as having witnessed.⁴³ What was strange about the first torpedo as it skimmed by the Turner Joy; the sonar aboard the Turner Joy did not register any torpedo noise.⁴⁴

This was the only visual sighting of a torpedo reported the night of August 4—one torpedo by four men. The remainder of the "torpedo sightings" were made by sonar. On the Maddox sonar that night was an

operator with very little experience.⁴⁵ As a former crewmate says of David Mallow,

On some of our earlier patrols, we'd lock on a submarine and David might take over and listen while the regular operator took a coffee break or went to the head. But this was routine, "passive" experience, when the target was already identified, and all you had to do was listen. Now when you get into a situation where you're trying to find something, Christ, that's all the difference in the world. ⁴⁶

Patrick Park, at the main gun director, says of Mallow,

It seemed like he was hollering all the time. I said to myself, Aw, God, if there are that many torpedoes in the water the whole Seventh Fleet would be blown up by now. I had an idea what was happening. At 30 knots there's a big pie-wedge of dead space behind the ship, with so much noise in it - a real roar - that an operator can't even keep his phones on it. Also, when you are making sharp turns, the effect on the hydrophone is exactly what a torpedo sounds like when it is passing you. I noticed the sequence would never vary: We'd make a turn, and Dave would call "Torpedo" and give a range. So we would turn again, and sure enough, up would come another call, "Torpedo." ⁴⁷

Herrick came to the same conclusion; "We tried to figure out what was going on ... It was an extremely rare situation. Ordinarily you don't make full power, full rudder turns with your sonar turned on. We kept a straight course after that, and things sort of petered out."⁴⁸

During the height of the action when Mallow was reporting "contacts it seemed like every five seconds," Park reports the main radar room was yelling "try this one, why can't you get these things?" To this Park says, "The whole two or three hours we were out there ... we didn't pick up a single contact we could hold."⁴⁹ And Lieutenant Connell, the weapons officer, who was responsible for firing the guns, says:

We could not hold a target long enough in our gun range to do any firing. There were blips on our radar

and they were very faint. We'd no sooner get our directors, our fire-control radar, get on the bearing, and the target would then disappear ... I am definitely convinced there were none there ... There might have been some outside of our gun range (18,000 yards or nine nautical miles) but there were none around our ship. 50

Interviewed in 1968, Commander Ogier, the Commanding Officer of the Maddox in August 1964 (Herrick was the Commanding Officer of the Task Force including both the Maddox and the Turner Joy) said he believed the Maddox's sonar had at the start of the action contacted two torpedoes.⁵¹ However in 1967, he had said, "I thought they were torpedoes but after three years away from it I have my doubts now. I just don't know." He thought that perhaps one reason he believed the August 4 attack to be real was the unquestionable occurrence of the August 2 attack, "but conclusive evidence of my knowledge I can't give, which is the bad thing about the incident." Were there targets out there? "I don't know. I really don't know."⁵² The same answer was given in 1968 by Lieutenant John M. Leeman, in charge of the sonar aboard the Maddox, to the question: Were these torpedoes legitimate?⁵³ Finally Herrick himself would not classify all the "torpedo sightings" on the night of August 4 as torpedoes, "We heard numerous torpedo effects on our sonar. Some of them were later judged to be self-noises or boat noises, but the authenticity of several were confirmed by visual torpedo wake sighting by Turner Joy personnel."⁵⁴ Here he referred to the single torpedo sighted by four topside personnel of the Turner Joy.

Did anyone hit anything? Herrick says yes!

I personally saw Turner Joy's bullets going out on the radar - I saw the pip from the bullets as they went out. I could see the target pip on the radar, see the bullet pip and the target pip merge, and then the target pip disappear. It was obvious to me that

there were several boats, and that at least two of them had been sunk. 55

And yet according to James A. Stankevitz, a radarman aboard the Maddox who was watching the main radar that night, "We had a hard time even keeping the Turner Joy on the radar. We were running in the dark with lights out so the attackers couldn't see us. We were really sweating it out to avoid collision."⁵⁶ Secretary McNamara states in his prepared statement in 1968:

At about 10:24 PM, one target was taken under fire by Turner Joy. Numerous hits were observed on this target and it disappeared from all radars. The commanding officer and other Turner Joy personnel observed a thick column of black smoke from this target. 57

Yes, Commander Barnhart confirms "a big black column of smoke," but he saw it before the target that was believed to have been hit even appeared on the Turner Joy's radar.⁵⁸

In 1964, when the decision to act was made by the Executive branch and the Southeast Asia Resolution was being considered by the Legislative Branch, Secretary McNamara was testifying before the Senate Foreign Relations Committee and Armed Service Committee that "By midnight local time, the destroyers reported ... that the defensive aircraft from the Ticonderoga were illuminating the area and attacking the enemy surface craft."⁵⁹ In 1968 McNamara defined the extent of aircraft sightings and actions reported by the commanding officer of Attack Squadron 52 from the Ticonderoga, Commander G. H. Edmondson and his wingman Lieutenant J. A. Lurton to be: "gun flashes on the surface of the water as well as light antiaircraft burst at their approximate altitude ... (and) a 'snakey' high speed wake $1\frac{1}{2}$ miles ahead of the leader destroyer, USS Maddox."⁶⁰ Though identifying the Maddox, neither mentions actually seeing an enemy boat. In fact none of the pilots that night saw any

craft except the Turner Joy and the Maddox.⁶¹ Commander Wesley L. McDonald, one of the pilots, says, "It was dark as hell, We saw the destroyers clearly several times by flare light and by their wakes. I never saw any PT boats."⁶² Is it not strange the flares fired that night had no effect other than illuminating the Turner Joy and Maddox?

McNamara also said on August 6, 1964 before the Joint Hearing, "The Turner Joy reported that during the engagement, in addition to the torpedo attack, she was fired upon by automatic weapons while being illuminated by searchlights."⁶³ Captain Herrick calls this "imaginative of someone" and denies there was gunfire against either destroyer. Commander Barnhart is of the same opinion and recalls no such report.⁶⁴

An interrogation report of a "senior commander in the North Vietnam Navy" who was captured on July 1, 1966, provides further insight into the August 4 attack. After giving full and comprehensive detail of the August 2 attack against the Maddox, the interrogation report reveals that he and others had this to say about the August 4 attack:

Extensive interrogation of all potentially knowledgeable sources reveals they have no info concerning a NVN attack on US ships on August 4, 1964. They state definitely and emphatically that no PT's could have been involved. They do have knowledge of a US air attack on 5 August in which at least one and possibly Swatow FGMs (North Vietnamese patrol boats) were sunk by ACFT (aircraft) in vicinity of the Gianh River ... Slight damage was also inflicted to ACFT on 2 PTs this date as stated Reference Alpha (referring to another of the mainland attacks).

The possibility Swatows could have committed the August 4 attack has also been carefully explored. Here again, however, all sources disclaim any knowledge of such an attack. Based on the experience of interrogations thus far it is very possible that PT boat crews in general might not have heard of this attack since they apparently have little contact with other ship types. On the other hand, source (the North Vietnamese naval commander) obviously has traveled in higher circles and has proved himself

exceptionally knowledgeable on almost every naval subject and event of interest. Yet he specifically and strongly denies that any attack took place. When pressed further on this issue, he states that if such an attack did take place, it could only have been committed by Swatows. 64

Secretary McNamara seeks in his 1968 prepared statement before the Senate Committee on Foreign Relations to rebut this information by contradictory information received from a later captive:

A North Vietnamese naval officer captured in July 1967 provided the name of the commander of a PT squadron. Intelligence reports received immediately after the August 4 attack, this commander and his squadron were identified by name and number as participants. 65

In further reference to this second prisoner in later testimony, McNamara attempts to reduce the importance of the 1966 captive's information by stating he "was not nearly as comprehensive or as illuminating on the participation by North Vietnam in the August 4 attack as was the testimony of the prisoner of July 1967 which, I think, came to light only within the past few days."⁶⁶ How it was more illuminating or more comprehensive is difficult to understand. This second prisoner did not confirm that an attack had indeed occurred on August 4. Nor did he provide any information that would lead one to believe an attack had occurred on August 4. What he did provide was the name of the commander of a PT squadron, a name radio intercepts indicated commanded the August 4 attack boats. In addition, Senator Fulbright later learned that information that supposedly "came to light only within the past few days" had indeed been available nineteen months before the Secretary's appearance. This commander's name that cast so much light on the situation for McNamara had first appeared in a naval interrogation report dated July 1966.⁶⁷

Could anyone have doubted the authenticity of an attack described by an official Navy Department account as follows:

Maddox lit up the night with starshells and the two destroyers nimbly maneuvered to avoid wakes of torpedoes as Turner Joy opened on the oncoming enemy with well directed gunfire. For two and one-half hours, the two destroyers fought off pass after pass of the enemy torpedo boats which closed within 2,000 yards to attack with automatic weapons and torpedoes. There were at least six motor torpedo boats involved in the attack. Two were believed to have been sunk after receiving direct hits and two badly damaged. The remaining PTs the fight gone out of them, sped north through the black night and out of range. 68

Yet Captain Herrick did. His first message after everyone had calmed down and order had been restored aboard ship reflected his doubts: "Entire action leaves many doubts except for apparent attempted ambush at beginning. Suggest thorough reconnaissance in daylight by aircraft."⁶⁹ Herrick then began a quick investigation aboard the Maddox and ordered the same be done aboard the Turner Joy. No one aboard the ships actually saw or heard gunfire, no one could possibly positively identify enemy boats, the torpedo picture was confusing and the more one heard, the more one's doubts piled up, and even reports from the aircraft were confusing. At 1:30 AM Captain Herrick sent Pacific Headquarters the following evaluation:

Review of action makes many reported contacts and torpedoes fired appear doubtful ... Freak weather effects and overeager sonarmen may have accounted for many reports. No actual visual sighting by Maddox.

Suggest complete evaluation before any further action. 70

But action was already being readied in Washington. By 1:30 PM Washington time (1:30 AM Herrick's time; the time of Herrick's second message) President Johnson with Rusk, McNamara and McGeorge Bundy had decided to conduct a retaliatory strike against North Vietnamese

installations clearly associated with the patrol boats. Though the machinery for retaliation had been set in motion, President Johnson did make it clear that he wanted more information before the reprisal attack was actually launched. He wanted the missions flown before sundown, Vietnam time, and he personally wanted to announce the attacks himself over American television.⁷¹ As for a Congressional resolution, there was William Eundy's May draft.⁷² It would be a simple matter to change the intended response of "aggression against South Vietnam" to fit the present situation of "repeated attacks on US naval vessels in international waters."⁷³ But Eundy was on vacation so Abram Chayes, with George Ball's help drafted an acceptable resolution within a couple of hours.⁷⁴

One might imagine the impact with which the second Herrick message hit the Pentagon and McNamara. Here was the President set to retaliate with air strikes at 7:00 PM Washington time (7:00 AM the next morning in the Gulf of Tonkin) and announce his action to the nation at 9:30 PM Washington time, and of course, prime television time, while the bombs were bursting in the air;⁷⁵ and here was doubt that the alleged attack even took place.

As for Secretary McNamara's exact reaction, he recalls in 1968 during testimony before the Senate Committee on Foreign Relations:

What would you think we would do when we got it? Well, obviously we were concerned, and we immediately began to examine it, and I have here a whole series of steps we took at that point as to what was done. I personally called Admiral Sharp and brought this to his attention, and said we obviously did not want to carry out retaliatory action unless we are "damned sure what happened." Those were the exact words. ⁷⁶

"Things got hot and heavy. They kept hollering at us. 'Why haven't you answered our so-an-so?' 'Verify, verify!' It was almost impossible."⁷⁷ Now time became the important element. Eleven thirty

was the latest the President could speak to the nation and still expect to have maximum exposure. At 5:30 AM August 5 (5:30 PM August 5 Washington time) the Maddox was still receiving requests for confirmation of the attack from Commander-in-Chief, Pacific:

1. Can you confirm absolutely that you were attacked?
2. Can you confirm sinking of PT boats?
3. Desire reply directly supporting evidence.⁷⁸

At 7:06 AM August 5 again from Commander-in-Chief, Pacific: "Can you confirm that you were attacked by PT or Swatow?"⁷⁹ And from Vice Admiral Johnson of Seventh Fleet at 9:00 AM August 5 to Commander Larnhart of the Turner Joy:

Who were witnesses, what is witness reliability? Most important that present evidence substantiating type and number of attacking forces be gathered and disseminated. 80

Meanwhile what was happening in Washington while the men who make things happen were awaiting their replies? Secretary McNamara in 1968 described the situation as follows:

At roughly 2:45 Eastern Daylight Time (PM August 5, 2:45 AM August 4 Gulf of Tonkin time) which is roughly an hour and 20 minutes later (referring here to receipt of Captain Herrick's second message indicating doubt about torpedo firings) the commander in the Pacific, or rather the commander of the task force reported to the commander in the Pacific that he was certain that the original ambush was bona fide. (Under continuous demands for more evidence, Herrick cabled that "details of action present a confusing picture, although certain that original ambush was bona fide." 81

This is a message on (deleted). Details of the action present a confusing picture, but he had made positive visual sightings of cockpit lights or similar lights passing near the Maddox (the sightings were made by two marines and Herrick says he had "some reservations" since "a marine aboard a ship can see almost anything." He included them anyway, but he says, "I don't remember saying positive visual identification ..." 82)

and the Turner Joy reported two torpedoes passed near her.

Then, at 1500, roughly 15 minutes after the report I just gave you, I met, along with Secretary Vance, with the Joint Chiefs of Staff to review all of the evidence relating to the attack, to determine whether, in fact, an attack on the destroyers had occurred. We met for about $2\frac{1}{2}$ hours discussing it, reviewing it, considering particularly the communications intelligence information we had available to us, and then at 1723, which was 2 hours 23 minutes after the meeting started, we received a phone call from the Commander-in-Chief of the Pacific stating that in his opinion the attack had occurred.

I should have mentioned earlier that about 40 minutes before that telephone call, this is to say at 1640, the Commander-in-Chief of the Pacific had called in stating that he had received the information from the commander of the task force, saying that the commander of the task group was certain that the original ambush was bona fide and had made positive visual identification of cockpit lights, and reporting that the Turner Joy had reported two torpedoes (message from Captain Herrick referred to in first paragraph).

Then, as I say, about 45 minutes after that the Commander-in-Chief Pacific called back again while I was still in the meeting with the Joint Chiefs, stating that he was convinced the attack had occurred and that all were satisfied that it had.

Then at 1807, which was $3\frac{1}{4}$ minutes after that, the Commander-in-Chief Pacific called again and I was present down in the Joint Chiefs quarters when the call came in. We discussed it, and he stated he was fully assured the attack took place. I stated that I was then convinced that it had, and I released the Executive order on the strike. So that between 1327 and 1807 we were receiving information that bore on whether an attack had taken place. 83

And this, the release of the Executive order to strike to the Commander-in-Chief, Pacific occurred before any replies had been received to the last three messages sent to confirm the attack. And the Commander-in-Chief, Pacific, Admiral U.S. Grant Sharp, was positive that the attack had taken place before receiving a reply to his

5:30 AM message to Herrick requesting confirmation of an attack.⁸⁴
 Herrick never did reply to Sharp's question of 7:06 AM⁸⁵ since he felt
 his reply to the 5:30 AM message took care of the answer.⁸⁶ This
 reply, which he released at approximately 6:00 AM (6:00 PM Washington
 time; McNamara released the Executive order to strike at 6:07 PM),
 reached Washington at 10:59 PM:

Maddox scored no known hits and never positively
 identified a boat as such. Furthermore, weather was
 overcast with limited visibility ... air support was
 not successful in locating targets. There were no
 stars or moon, resulting in almost total darkness
 throughout action ... No known damage or personnel
 casualties to either ship. Turner Joy claims sink-
 ing one craft and damaging another ... The first boat
 to close the Maddox probably fired a torpedo at the
Maddox which was heard but not seen. All subsequent
Maddox torpedo reports are doubtful in that it is sus-
 pected that sonarman was hearing ship's own propeller
 beat. 87

Nineteen minutes before receipt of Herrick's reply, the first planes
 left the Ticonderoga, on their way to hit targets in North Vietnam.⁸⁸

This was long before Larnhart's answer to Admiral Johnson -

(Officers with) good reliability (saw torpedo wake).
 Estimate two PT's attack originally. However must ad-
 mit two factors defer. No ECM from PT boats. However,
 tactics seem to be to bore-sight on wake, thus account-
 ing for lack of radar signals. No sonar indications of
 torpedo noises, even that which passed down slide. Self
 noise was very high. 89

reached the Pentagon at 1:15 AM,⁹⁰ President Johnson at 11:37 had begun:
 "My fellow Americans ..."⁹¹

The Tonkin Gulf Resolution

The Chairman (Senator Fulbright).* I think this

*Speaking in February 1968 at Hearings before the Senate Committee on
 Foreign Relations, The Gulf of Tonkin, The 1964 Incidents about the
 Joint Hearings before the Senate Committees on Foreign Relations and
 Armed Services on August 6, 1964 on the Southeast Asia Resolution.

committee, and certainly as chairman of the committee, I think it was very unfair to ask us to vote upon a resolution when the state of the evidence was as uncertain as I think it now is, even if your intercepts are correct. Of course, none of those intercepts were mentioned to us, I don't believe, in the testimony on August 6. Your statement and General Wheeler's was without any doubt, any equivocation that there was an all-out attack.

I submit that even if you give the most favorable interpretations to these reports that it was far less than positive and unequivocal as your statement before the committee indicates.

This has been very serious to me and all members of this committee and the Senate.

We have taken what is called the functional equivalent of a declaration of war* upon evidence of this kind, and action as precipitate as this was. Even the commander, that is one of the crucial cablegrams from the commander of the task force, recommended that nothing be done until the evidence was further evaluated. I read it this morning, I won't read it again.

But that alone almost, if I had known of that one telegram, if there had been put before me on the 6th of August, I certainly don't believe I would have rushed into action.

We met if you will recall for 1 hour and 40 minutes, in a joint meeting of the Armed Services and this committee and we accepted your statement completely without doubt. I went on the floor to urge passage of the resolution. You quoted me as saying these things on the floor. Of course all my statements were based upon your testimony. I had no independent evidence, and now I think I did a great disservice to the Senate. I feel very guilty for not having enough sense at that time to have raised these questions and asked for evidence.

I have publicly apologized to my constituents and the country for the unwise action I took without at least inquiring into the basis. It never occurred to me that there was the slightest doubt, certainly on the part of the commander Herrick, who was in charge of the task force that this attack took place. He

*Nicholas deB. Katzenbach, U.S. Commitments to Foreign Powers: Hearings Before the Committee on Foreign Relations, United States Senate, 90th Congress, First Session.

obviously had doubts, his own cablegram so states. That is the reason for it. I feel a very deep responsibility, and I regret it more than anything I have ever done in my life, that I was the vehicle which took that resolution to the floor and defended it in complete reliance upon information which, to say the very least, is somewhat dubious at this time. 92

And so Senator Fulbright expresses doubt that he could have supported the Southeast Asia Resolution had he known of the uncertainty that any attack actually occurred on August 4. But what if an attack did take place against the Maddox while it "was operating in international waters," engaged in what McNamara termed "a routine patrol of the type we carry out all over the world at all times?"⁹³ Here three other questions occur. Where exactly was the Maddox operating, and what exactly was the routine nature of the patrol? And why attack a routine patrol in international waters?

That the Maddox never ventured closer than 8 nautical miles to the North Vietnamese mainland or closer than 4 nautical miles to the offshore islands per mission instructions is not in question here. What is in contention is North Vietnam's claimed territorial waters. According to Secretary McNamara, North Vietnam prior to September 1, 1964, when she officially proclaimed territorial waters of 12 miles, had never claimed more than a width of three miles. He goes on to say: "The North Vietnamese government succeeded the French government which adhered to the three-mile limit. Under the rules of international law, no claim by North Vietnam in excess of three miles would be assumed unless specifically made and published."⁹⁴ Yet in 1963, the United States Navy, though making the same assumption, admitted "there (was) a good possibility" that North Vietnam, like most Communist nations, would claim territorial waters of 12 miles.⁹⁵ And on three different

occasions before the August 4, 1964 Maddox incident, North Vietnam indicated to the world it was claiming a 12 mile limit. Radio Hanoi, a part of North Vietnam's official media, on July 28, 1964, in an English-language broadcast over its international frequencies claimed: "At 4:30 PM on 25 July 1964, four United States - South Vietnamese warships intruded into the territorial waters of the DRV at 106 degrees 43 minutes east longitude and 17 degrees 45 (minutes) north latitude and encircled two fishing boats belonging to inhabitants of Bao Ninh Commune in Quang Binh Province."⁹⁶ This location is nine statute miles from the North Vietnamese coastline. On August 2, 1964, Radio Hanoi claimed that the United States and the Saigon government "on July 30 sent warships to shell Hon Me and Hon Ngu Islands in the DRV territorial waters."⁹⁷ Hon Ngu is 2.4 miles from the North Vietnamese mainland and Hon Me is 7.2 miles. And on the morning of August 4 a spokesman for the Vietnam People's Army, quoted on Radio Hanoi, asserted: "In the night of July 31 - August 1, the U.S. imperialists again sent a destroyer to encroach upon North Vietnam's territorial waters in Quang Binh Province. This warship had been cruising for two days, August 1 and 2, between Hon Mat Island and Hon Me Island to intimidate fishing boats of our people, openly infringing upon our territorial waters. In face of the provocations by the sea rovers, our patrol ships took action to defend our territorial waters and fishermen and chased the enemy ship out of our territorial waters ..."⁹⁸ The Defense Department acknowledges five separate CPA's within 12 miles of the mainland by the Maddox during the period from July 31-August 3, 1964.⁹⁹ Transcripts of broadcasts such as those above were available throughout the national security establishment. The United States recognizes no claim of territorial waters in

excess of three miles, but as one State Department official put it while speaking of the Pueblo case in September 1968, "Now, if the question is why in this case (the Pueblo) do you take measures to respect a 12-mile limit (claimed by North Vietnam) I can only say the obvious, that you would do that as a precedent and precautionary measure in the interest of not creating incidents."¹⁰⁰

As for the mission that brought the Maddox closer than 12 miles from the North Vietnam mainland, Secretary McNamara asserts:

The primary purpose of the Maddox was to observe North Vietnamese naval activity in those waters, in view of the evidence we had of infiltration by sea by North Vietnam into South Vietnam. Other secondary purposes were area familiarization and observation by visual and electronic means of any other activity of military interest. We had the undisputed right to do this. In view of our assistance to South Vietnam, such observations were needed. 101

Senator McCarthy during the 1968 Hearings had his own thoughts on this mission:

All right. We can say-you say-America has the right to do it. That is fine, I think we have, too. But it becomes different if we pick up information that should be ours and we then transmit it to another country like South Korea, which in turn, uses it against North Korea. Then our ships picking up the information is not quite in the same immune position it would be if it were picking up information for our use alone. 102

What brought Senator McCarthy to this conclusion was an earlier exchange with Secretary McNamara on the "routine" nature of the particular patrol the Maddox was conducting:

Senator McCarthy: Was the information that our destroyers were gathering transmitted to the South Vietnamese Navy for its use?

Secretary McNamara: I cannot answer the question.

Senator McCarthy: Well, you must know that.

Secretary McNamara: No, I do not know that.

Senator McCarthy: You cannot answer that? If we get information that would be helpful to the South Vietnamese Navy, we would give it to them?

Secretary McNamara: I do not say we would not. I simply cannot answer it.

Senator McCarthy: If we were transmitting it, wouldn't it be the equivalent of an act of war against North Vietnam? In other words, you were not just out gathering information for the files of the Defense Department, were you?

Secretary McNamara: We were gathering information that we needed to assist the South Vietnamese in reducing the adverse effect on them of the infiltration from north to south by sea, and I so stated.

I further stated, and I stated that at the time, it was part of the public debate at the time, that we were furnishing to South Vietnam the boats they used.

Senator McCarthy: I know.

Secretary McNamara: Whether we gave information or not, the fact is --

Senator McCarthy: The question of the time lapse and so on, has become much less important. If you picked up information one day and gave it to them, and the next day South Vietnam took military action, it becomes almost a part of the same naval operation. 103

And one final thought from Senator McCarthy:

... I have no objection to our spying for our own purposes, but I say if we have a spy ship picking up information and then transmitting that information to another country which is engaged in hostilities with a nation on which we were spying, then we are not quite so pure as we represent ourselves to be. 104

We return to the question who provoked whom? A United States warship is conducting an intelligence mission within waters considered by North Vietnam to be within its territorial limit. The United States is conducting this mission in the same vicinity and during the same time

that its ally South Vietnam is conducting "hit and run" operations against islands immediately off the North Vietnamese coastline. North Vietnam had no way of knowing the two operations were not linked, if, in fact, they were not. At the very least North Vietnam is sure that intelligence gathered by this United States warship is being given to an enemy with which it is conducting open hostilities. And its vessels are fired upon as they approach the United States patrol. Can it be said that any action North Vietnam chose to take was entirely and totally unprovoked?

Senator Gore, before the Hearings in 1968 on the Gulf of Tonkin incidents adjourned, expressed his doubts:

... I feel the Congress and the country were misled about the closeness of operation of DeSoto patrol and the South Vietnamese raids by vessels that we had furnished by men we had trained, operating with the advice of our military advisers in South Vietnam. That is No. 1.

I know I have been misled. It may be partly my fault. I am not excusing myself.

Secondly, I feel that I was misled that this was an entirely unprovoked attack, that our ships were entirely on routine patrol. The fact stands from today that they were intelligence ships; that they were under instructions to agitate North Vietnam radar, that they were lying close to the shore within 4 miles of the island under orders in the daytime, retiring at night; that they were covered with immediate air cover which, in itself--that they were covered with military aircraft which you said on television the other day which would be provocative off of North Korea. Why would it not be provocative off of North Vietnam I do not know.

Thirdly, I think that from my tentative conclusion it is that the administration was hasty, acted precipitately, inadvisably, unwisely, out of proportion to the provocation in launching 64 bombing attacks on North Vietnam out of a confused, uncertain situation on a murky night, which one of the sailors described as dark as the knob of Hell; and particularly, 5 hours after the task force commander had cabled that he doubted that there were any attacks and recommended no further action be taken until it was thoroughly canvassed and reviewed. 105

But if in 1964 the Congress and the American public were misled about the events of August 4, little did they expect the resultant Resolution to lead to even more deception and more lies. The Chairman of the Armed Services Committee, Senator Russell of Georgia, said: "I am sure that all of us who intend to vote for the joint resolution pray that the adoption of the resolution, and the action that may be taken pursuant to it, will achieve the same purpose and avoid any broadening of the war, or any escalation of danger."¹⁰⁶ Senator Keating of New York stated his understanding that the Resolution was not a "blank check" to expand hostilities without the consent of Congress.¹⁰⁷ Senator Church of Idaho expressed his understanding that the Resolution's purpose was not an expansion of the war.¹⁰⁸ At one point during the debate on the Senate floor over the Resolution, Senator Gaylord Nelson of Wisconsin expressed concern that the United States, instead of providing South Vietnam military advisers, equipment, and material, was beginning to "provide military forces to do battle in place of South Vietnamese forces:"

... Am I to understand that it is the sense of Congress that we are saying to the Executive Branch: "If it becomes necessary to prevent further aggression, we agree now, in advance, that you may land as many divisions as deemed necessary, and engage in a direct military assault on North Vietnam if it becomes the judgment of the Executive ... that this is the only way to prevent further aggression?"

Mr. Fulbright: If the situation should deteriorate to such an extent that the only way to save it from going completely under to the Communists would be action such as the Senator suggests, then that would be a grave decision on the part of our country as to whether we should confine our activities to very limited personnel on land and the extensive use of naval and air power, or whether we should go further and use more manpower.

I personally feel it would be very unwise under any circumstances to put a large land army on the Asian continent.

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UTAH UNIV SALT LAKE CITY DEPT OF POLITICAL SCIENCE
THE EXECUTIVE POWER TO MAKE WAR: THE POWER TO DECEIVE. (U)
1975 F P BUTLER

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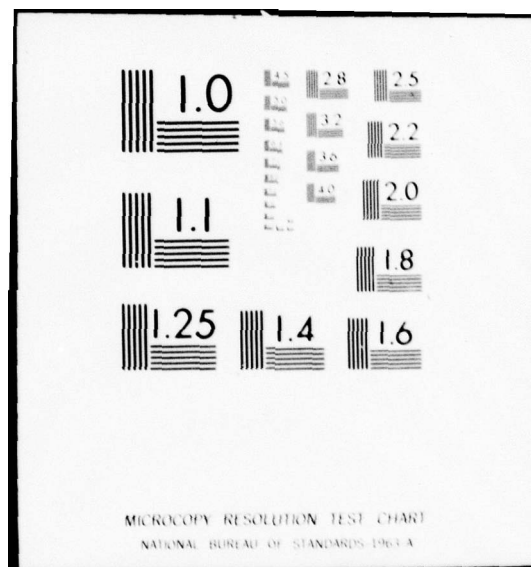
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It has sort of been an article of faith ever since I have been in the Senate, that we should never be bogged down. We particularly stated that after Korea. We are mobile, we are powerful on the land and the sea. But when we try to confine ourselves and say that this resolution neither prohibits or authorizes such action by the Commander-in-Chief, I believe that is carrying it a little further than I care to go. 109

But later in the debate Senator Fulbright was to add: "I have no doubt that the President will consult with the Congress in case a major change in present policy becomes necessary."¹¹⁰

The day after the retaliatory strike President Johnson was talking to a few chosen reporters, when he leaned over to one and asserted:

"I didn't just screw Ho Chi Minh, I cut his pecker off."¹¹¹

Perhaps it might be said today that the Congress and American people in the months after this were treated by President Lyndon B. Johnson in a similar manner.

Notes

¹Joseph C. Goulden, Truth is the First Casualty: The Gulf of Tonkin Affair-Illusion and Reality (New York: Rand McNally and Company, 1969), p. 12.

²David Halberstam, The Best and the Brightest (New York: Random House, 1972), p. 414.

³President Johnson's August 4, 1964 television address to the Nation. New York Times, August 5, 1964, p. 1.

⁴The Pentagon Papers, The Defense Department History of United States Decision-Making on Vietnam (The Senator Gravel Edition, Vol. 3; Boston: Beacon Press, 1971), p. 151.

⁵Ibid., pp. 150 - 151.

⁶Anthony Austin, The President's War - The Story of the Tonkin Gulf Resolution and How the Nation Was Trapped in Vietnam (New York: J.B. Lippincott Company, 1972), pp. 229 - 230.

⁷Goulden, Truth is the First Casualty, p. 96.

⁸U.S., Congress, Senate, Committee on Foreign Relations, The Gulf of Tonkin, the 1964 Incidents, Hearings, before the Committee on Foreign Relations, Senate, 90th Cong., 2d sess., 1968, p. 20.

⁹Austin, The President's War, p. 230.

¹⁰Ibid., p. 233.

¹¹Goulden, Truth is the First Casualty, p. 123.

¹²Ibid., p. 124.

¹³See Appendix D, p. 357.

¹⁴Austin, The President's War, p. 272.

¹⁵Goulden, Truth is the First Casualty, p. 138.

¹⁶Ibid., p. 125.

¹⁷Ibid., p. 48.

¹⁸U.S., Congress, Senate, Committee on Foreign Relations and Armed Services, Southeast Asia Resolution, Hearing, before Committee on Foreign Relations and Armed Services, Senate, 88th Cong., 2d sess., 1964. (Emphasis supplied).

¹⁹See Note 16.

²⁰See Note 14.

²¹U.S., Congress, The Gulf of Tonkin, The 1964 Incidents, pp. 14 - 15.

²²Goulden, Truth is the First Casualty, p. 141.

²³See Note 21.

²⁴Goulden, Truth is the First Casualty, p. 125.

²⁵See Note 14.

²⁶Goulden, Truth is the First Casualty, p. 219.

²⁷U.S., Congress, The Gulf of Tonkin, The 1964 Incidents, pp. 30 - 31.

²⁸See Note 22.

²⁹U.S., Congress, The Gulf of Tonkin, The 1964 Incidents, p. 33.

³⁰David Wise, "Remember the Maddox!", Esquire, April, 1967, p. 125.

³¹Goulden, Truth is the First Casualty, p. 142.

³²Austin, The President's War, pp. 277 - 78.

³³U.S., Congress, The Gulf of Tonkin, The 1964 Incidents, p. 17.

³⁴Ibid., p. 91.

³⁵Ibid., p. 17.

³⁶Ibid., p. 92.

³⁷Austin, The President's War, p. 280.

³⁸U.S., Congress, The Gulf of Tonkin, The 1964 Incidents, pp. 15 - 16.

³⁹Goulden, Truth is the First Casualty, p. 143.

⁴⁰Austin, The President's War, p. 280.

⁴¹Ibid., p. 281.

⁴²Ibid., p. 280.

⁴³U.S., Congress, The Gulf of Tonkin, The 1964 Incidents, p. 16.

⁴⁴Austin, The President's War, p. 281.

⁴⁵Goulden, Truth is the First Casualty, p. 144.

⁴⁶Ibid.

⁴⁷Ibid., p. 145.

⁴⁸Austin, The President's War, p. 283.

⁴⁹Goulden, Truth is the First Casualty, p. 143.

⁵⁰Wise, "Remember the Maddox!", p. 126.

⁵¹Austin, The President's War, p. 281.

⁵²Wise, "Remember the Maddox!", pp. 62, 126.

⁵³Ibid.

⁵⁴Goulden, Truth is the First Casualty, p. 145.

⁵⁵Ibid., p. 146.

⁵⁶Ibid.

⁵⁷U.S., Congress, The Gulf of Tonkin, The 1964 Incidents, p. 16.

⁵⁸Wise, "Remember the Maddox!", p. 126.

⁵⁹U.S., Congress, Southeast Asia Resolution, p. 9.

⁶⁰U.S., Congress, The Gulf of Tonkin, The 1964 Incidents, p. 16.

⁶¹Austin, The President's War, p. 284.

⁶²Wise, "Remember the Maddox!", p. 127.

⁶³U.S., Congress, Southeast Asia Resolution, p. 9.

⁶⁴Goulden, Truth is the First Casualty, p. 213.

⁶⁵U.S., Congress, The Gulf of Tonkin, The 1964 Incidents, p. 18.

⁶⁶Ibid., p. 51.

⁶⁷Goulden, Truth is the First Casualty, p. 214.

⁶⁸Austin, The President's War, pp. 286 - 87.

⁶⁹Goulden, Truth is the First Casualty, p. 151.

⁷⁰Ibid., p. 152.

⁷¹Ibid., pp. 149 - 50.

⁷²Austin, The President's War, pp. 236 - 38.

⁷³Ibid., p. 289.

⁷⁴Ibid.

⁷⁵Ibid., p. 297.

⁷⁶U.S., Congress, The Gulf of Tonkin, The 1964 Incidents, p. 56.

⁷⁷Austin, The President's War, p. 298.

⁷⁸Ibid., p. 311.

⁷⁹Ibid.

⁸⁰Ibid., p. 312.

⁸¹Ibid., p. 300.

⁸²Ibid., pp. 300, 303.

⁸³U.S., Congress, The Gulf of Tonkin, The 1964 Incidents, pp. 58 - 59.

⁸⁴See Note 78.

⁸⁵See Note 79.

- ⁸⁶Austin, The President's War, p. 311.
- ⁸⁷Goulden, Truth is the First Casualty, p. 156.
- ⁸⁸Ibid.
- ⁸⁹Austin, The President's War, p. 312.
- ⁹⁰Goulden, Truth is the First Casualty, p. 157.
- ⁹¹Ibid.
- ⁹²U.S., Congress, The Gulf of Tonkin, The 1964 Incidents, pp. 79 - 80.
- ⁹³U.S., Congress, Southeast Asia Resolution.
- ⁹⁴U.S., Congress, The Gulf of Tonkin, The 1964 Incidents, p. 13.
- ⁹⁵Goulden, Truth is the First Casualty, p. 227.
- ⁹⁶Ibid.
- ⁹⁷Ibid.
- ⁹⁸Ibid., pp. 227, 230.
- ⁹⁹Ibid., p. 227.
- ¹⁰⁰Ibid., p. 225.
- ¹⁰¹U.S., Congress, The Gulf of Tonkin, The 1964 Incidents, p. 12.
- ¹⁰²Ibid., p. 46.
- ¹⁰³Ibid., pp. 44 - 45.

¹⁰⁴Ibid., p. 46.

¹⁰⁵Ibid., p. 102.

¹⁰⁶U.S., Congress, Senate, Congressional Record, 88th Cong. 2d sess., Vol. 110, pt. 14, August 6, 1964, pp. 18410 - 11.

¹⁰⁷Ibid., p. 18456.

¹⁰⁸Ibid., pp. 18415 - 16.

¹⁰⁹Ibid., pp. 18406 - 07.

¹¹⁰Ibid., p. 18420.

¹¹¹Halberstam, The Best and the Brightest, p. 414.

CHAPTER V

EXECUTIVE CONSOLIDATION OF THE POWER TO DECEIVE: 1948 - 1973

Introduction

... it appears clear that our constitutional arrangements for controlling the warrmaking powers of the president are faulty. Our system of checks and balances was devised because the founders of our system knew that power corrupts. The system broke down because our executive leaders, having assumed exclusive power in the making of decisions about the war, sought to maintain that power by systematic deception, thus proving the founders' adage. 1

Senator George McGovern
1972

It is in light of the above statement by Senator McGovern that we come all too clearly to an examination of the last quarter century. Though the Executive has in a very few instances in the past exercised war powers independently of Congress, the complete exclusion of the Congress from the decision to commit military forces is relatively new. This practice prompted Eugene G. Windchy to remark, "During 16 of the last 23 years, American Presidents have been waging undeclared wars."² And "Five times in the past 10 years" Henry Steele Commager told the Foreign Relations Committee in 1971:

... Presidents have mounted major military interventions in foreign nations without prior consultation with the Congress: the Bay of Pigs, the invasion of the Dominican Republic, the attacks on North Vietnam, Cambodia and Laos. None of these now appear to have represented a genuine emergency; none were in response to attacks upon the United States which implicably required immediate military reaction. None therefore appear to meet the requirements of the exercise of war powers by the President formulated by the makers of the constitution. 3

It has been the crisis atmosphere generated by the Cold War that

has propelled the Executive into the legislative arena. Claiming the need to make quick decisions of a critical nature, Presidents have assumed the responsibility for the complete conduct of the country's foreign relations. Perceiving each crisis as the one that might end it all, the Executive sought to protect the Congress and the public from sharing the burdens generated by crisis decision-making. Claiming the necessity of fast action taken in secrecy the crisis is allowed to run its course, and then, and only then, does the Executive allow the information to leak or otherwise be disseminated. At this point, holding his personal advisors under the veil of Executive privilege, the President sends his cabinet to Capital Hill to tell the nation how it has been saved from yet another crisis. But certain information is made to appear in a more favorable light, and some information is false; but this is a necessary result of Executive leadership. Here the Congress and people are denied information essential to arrive at any other conclusion than that recently taken by its government. This is crisis foreign policy, and this is an outgrowth of Executive leadership in foreign policy. It is not the reverse that is true. This would claim that Executive leadership in foreign policy resulted from chronic crisis politics since 1948. Executive leadership in foreign policy and especially in taking the nation to war preceded this case. President Roosevelt took the nation to war and he manipulated the Congress and the people in this process. Crisis politics was a natural outgrowth of the leadership established by President Roosevelt and its first proponent, President Truman considered this power that was passed to him, "a sacred and temporary trust, which he was determined to pass on unimpaired by the slightest loss of power or prestige."⁴

Once the Congress and the people had been excluded from decisions affecting the military commitments of the nation, it became easy to gain their support through deception if any aspect of the decision might prove to be less than popular. President Roosevelt did it by making all of his decisions, and those measures that were adopted to implement the decisions, appear to be designed to prevent war. At that time that was the popular line. President Truman did it by disguising his actions under the name of the United Nations. At that time action taken by the United Nations was more accepted than that taken unilaterally.

But as the United States moved into the crisis-dominated decades of the '50's and '60's, the tendency of the Executive branch was to trust the Congress and the people with even less information. The Cold War became a contest veiled in secrecy by both sides. The regime on one side was based on the exclusion of the people from the decision-making process. The system on the other side postulated enlightened decision-making - an enlightened legislature and an enlightened people. But quickly this side discovered it couldn't play the game without adopting the other side's rules. And so they were adopted. Actions were not taken in the open; therefore the fact that a decision had been made on a certain subject was not even known. The Executive knew and his principal advisors knew, but the elected representatives of the people did not know. And what they did not know could not be revealed. But soon the Congress began to hear bits and pieces of these secret decisions. It began to use its power under the Constitution to look into the Executive branch. And here it discovered that it had indeed been deceived along with the people. The Tonkin Gulf incidents were

not what they had seemed to be.

What Executive military actions preceded the revelation of this and the subsequent decisions on Vietnam? And what role did these have in the total Vietnam deception played out by

Each of the last five presidents (who) has lied to the public about our involvement in Indochina and where it was likely to go, and always in reassuring credible ways that made active opposition to his policy seem unnecessary or hopeless. 5

From Korea to the Dominican Republic

On March 9, 1954, President Eisenhower at a news conference asserted: "There is going to be no involvement of America in war unless it is a result of the constitutional process that is placed upon Congress to declare it. Now let us have that clear ..." ⁶ Yet when he later sent more than 14,000 troops to Lebanon in July 1958 it was to "protect American lives and by their presence there to encourage the Lebanese Government in defense of Lebanese sovereignty and integrity." ⁷ The President did not even mention as authority the Middle East Resolution passed by the Congress on March 9, 1952, which provided,

... if the President determines the necessity thereof, the United States is prepared to use armed forces to assist any nation or group of nations requesting assistance against aggression from any country controlled by international communism ... 8

President Eisenhower could hardly point to the Middle East Resolution as authorizing the intervention in Lebanon when, "Given the nature of the Egyptian relationship to the USSR, it might be impossible to demonstrate the complicity of 'international communism.'" ⁹ Thus had the Executive intervened in a civil war ostensibly "to protect American lives." But the implication to American foreign policy and independent

Executive action is far more complex and significant in light of decisions to intervene in the Dominican Republic and Vietnam that followed. Intervention by invitation became the sole responsibility of the Executive. For whatever reason given the Congress and the people, in this case "to protect American lives" and "encourage the Lebanese Government in defense of Lebanese sovereignty and integrity," the real reason to intervene was carefully shielded from them. By this act "the United States dramatically demonstrated ... its constitutional determination to prevent the Lebanese regime's forcible overturn whether or not inspired by international communism."¹⁰ The strategy of unilateral intervention thus began clothed in deception.

The significance of the "Bay of Pigs" is not that two American Presidents planned and executed an intervention in secrecy, but that in the aftermath of failure President Kennedy not only denied American responsibility but rejected the strategy of unilateral intervention established by his predecessor and subscribed to by him.

... I have emphasized before that this was a struggle of Cuban patriots against a Cuban dictator. While we could not be expected to hide our sympathies, we made it repeatedly clear that the armed forces of this country would not intervene in any way.

Any unilateral American intervention, in the absence of an external attack upon ourselves or an ally, would have been contrary to our traditions and to our international obligations. 11

To deny American participation in the intervention is, according to Richard J. Walton,

... quite an extraordinary statement. Not only was the invasion planned by the United States, but the United States recruited, paid, and trained the exile force. To say that the "armed forces of this country would not intervene in any way" stretches the truth beyond the breaking point. The exiles used American military equipment. They were trained by American

military men, whether or not they wore uniforms. The warplanes were American, flown by American pilots. The frogmen who were first on the beach were American. American ships carried the invaders, and American naval units accompanied them. Americans were killed in the operation. To claim that America did not intervene was to lie and be caught in the lie. 12

And then came the "Cuban Missile Crisis." Here the decision was made in secret, and here perhaps it should have been so. In secret, with Congressional leadership advising, the executive leadership of the nation should have reached the decision to confront the Soviet Union with its findings and demanded withdrawal of the missiles from Cuba. So it should have been. Instead, the decision was arrived at by the President and an ad hoc group called Ex Com* during a period from 16 October to 22 October, 1962. The secrecy of the decision was protected until two hours before President Kennedy went on television on 22 October to announce the "quarantine" on shipments of offensive missiles from Russia to Cuba. At that time President Kennedy presented to the Congressional leadership the decision settled upon by him and the Ex Com; this comprised "the extent of Congressional participation in the greatest crisis of the post-war era, the one crisis which brought the world to the brink of nuclear war."¹³ The real meaning of crisis decision-making is just that. There is no role for a cumbersome Congress. The success and triumph of Presidential leadership in this time of crisis proved that, and even the Congress in the aftermath of mastering the Soviet Union was not arguing. For here was the truth, glowing with an incandescent radiance from the dizzying success wrought by the exercise of power from 1600 Pennsylvania Avenue:

*A continually shifting combination of top officials from the White House, the State Department, the Pentagon, plus Attorney General Kennedy, Treasury Secretary Dillon, and Dean Acheson.

... The ultimate impact of the missile crisis was wider than Cuba, wider even than the Western Hemisphere. To the whole world it displayed the ripening of an American leadership unsurpassed in the responsible management of power ... by his own composure, clarity and control, he held the country behind him. It was almost as if he had begun to shape the nation in his own image. 14

What heights to Executive power, what limits to Executive power; could it be questioned now?

And just as Truman inherited the executive monopoly of decision-making from Roosevelt and passed it to Eisenhower, so Kennedy inherited it from Eisenhower and passed it on to Johnson. Compared to the Vietnam problem, the Dominican Republic intervention was just one of those pesky incidents calling for a crisis decision from the Executive-in, then out. In before Congress is told of the action and out before any real opposition is mounted-not so very different from Lebanon and Eisenhower. As Johnson was to write later:

... I told the congressional leaders that I planned to announce immediately that our forces were going in to protect U.S. citizens. The order had gone out and several hundred marines would soon be landing. I learned later that as we spoke the first helicopters with marines aboard were landing near the Embajador Hotel. 15

And later in the evening of 28 April, 1965, President Johnson addressed the nation on television: "I have ordered the Secretary of Defense to put the necessary American troops ashore in order to give protection to hundreds of Americans who are still in the Dominican Republic and to escort them safely back to this country."¹⁶ But behind the scenes Ambassador Bennet was reporting from Santo Domingo "that if present efforts of forces loyal to the government fail, power will be assumed by groups clearly identified with the Communist party. If the situation described above comes to pass, my own recommendation and that of the Country Team

is that we should intervene to prevent another Cuba from arising out of the ashes of this uncontrollable situation."¹⁷ On April 29 "there was complete agreement among principal advisers that we must prevent a Communist takeover and act on a scale that would guarantee the earliest possible end to the fighting, destruction, and killing."¹⁸ President Johnson later wrote:

The decisions I made on April 29 were as follows: first, that the danger of a Communist takeover in the Dominican Republic was a real and present one; second, that a Communist regime in the Dominican Republic would be dangerous to the peace and safety of the hemisphere and the United States; third, that danger still existed in the disintegrating situation, for both American and foreign civilians in Santo Domingo; fourth, that the United States would put in sufficient force to achieve two purposes: to create the international security zone recommended by the OAS and to separate the rebels in the downtown area from the regular military forces; fifth, that we would seek a ceasefire, some kind of interim government, and the scheduling of orderly free elections in which all Dominican citizens, not just a minority with guns in their hands, would decide their political destiny. 19

So far as the Congress and the American people knew all the troops intervening in the civil war in the Dominican Republic were there to protect American citizens; this was quite a different mission than "separating the rebels in the downtown area from the regular military forces." United States soldiers stood a far better chance of being killed interposed between two opposing forces locked in combat than in simply protecting United States citizens. Senator William Fulbright thought so too:

The evidence is incontrovertible that American forces landed in Santo Domingo on April 28, 1965, not as was and is officially contended, for the primary purpose of saving American lives but for the primary if not sole purpose of defeating the revolution, which, on the basis of fragmentary evidence and exaggerated estimates of Communist influence, was judged to be either Communist-dominated or certain to become so. 20

Senator Fulbright wrote this in 1966. President Johnson confessed the deception in his memoirs in 1971, but then this was an admittedly "successful" intervention.

The real significance of Eisenhower and Lebanon, Kennedy and Cuba and Johnson and the Dominican Republic is not the success or failure of intervention, but in the fact of intervention by expanding Executive power. Each served to further consolidate power to intervene, make war and deceive. The intervention in Vietnam was building during this same period. Not rapidly, as with the instances just cited, but gradually. These instances could be categorized as crisis decisions to protect American citizens and/or the Western Hemisphere, not their lives and property as announced, but their sensibilities from spreading Communism. These were crises in which we were in and out, and deception as to purpose only left a bad taste-no scars. But each success in intervention-and with Kennedy success did follow failure-power was consolidated, confidence buoyed and lies and deception accepted. No wonder the Congress and the people were set up for gradual intervention whose open purpose was to counter the spread of Communism. But piecemeal intervention required piecemeal lies. There was no chance for a single quick intervention of United States forces covered by a single lie. Each planned step must be covered by a lie. According to Dr. Ellsberg this phenomenon is part of "the Stalemate Machine" he created to explain Presidential decision guidelines under crisis conditions. A part of the process is administration control of the Congress and people, and is accomplished in the following manner:²¹

- b. In communications to Congress and the public, the Administration:

- (1) expresses optimism (exceeding internal estimates at the time of decision) on both the short - and the long-term prospects of actual programs.
- (2) conceals (if necessary, misleading or lying about) indications of possible inadequacy of current programs, including:
 - (a) pessimistic estimates or appraisals;
 - (b) internal recommendations for more extreme actions;
 - (c) planning activity for much greater effort or more extreme actions.
- (3) describes the strategic stakes for the U.S. in maintaining a non-communist South Vietnam in the most impressive and grave terms, relying upon extended "domino" premises (whether or not currently affirmed by intelligence analyses).
- (4) conceals (lying or misleading as necessary) the full extent of programs actually decided upon (as well as of follow-on programs expected to be approved), instead giving the impression that fully scheduled build-ups are resulting from sequential, marginal, contingent ad hoc decisions. 22

Southeast Asia I-Vietnam

Each of the last five Presidents has lied to the public about our involvement in Indochina and where it was likely to go, always in reassuring, credible ways that made active opposition to his policy seem unnecessary or hopeless. This Presidential deceit has gone through three phases. The first, which lasted over three Presidents from 1946 through 1964, emphasized the theme: "It's not our war; and we won't get in." The next phase, under Johnson, was: "We're winning." Then the current one: "The War is being ended." Each of these assurances has been plausible at the time, much more so than interpretations that contradicted it. Each was what most people wanted to believe, and did believe; each coming from the President, served to allay concern, to defuse and deter resistance. 23

Typical of statements by Presidents during the first phase are those that professed belief that America would not become involved in another man's war. When in February 1954 the French were close to defeat, President Eisenhower said, "no one could be more bitterly opposed to ever getting the United States involved in a hot war in that region than I am." Further, he could not "conceive of a greater tragedy for America than to get heavily involved now in an all-out war in any of these regions, particularly with large units."²⁴ Almost ten years later on September 2, 1963, President Kennedy asserted, "In the final analysis, it is their war. They are the ones to win it or lose it. We can help them, we can give them equipment, we can send our men out there as advisers, but they have to win it-the people of Vietnam-against the Communists."²⁵ And on October 21, 1964, President Johnson: "We are not about to send American boys nine or ten thousand miles away from home to do what Asian boys ought to be doing for themselves."²⁶ Three Presidents, three statements pledging non-involvement in Indochina. Then how did involvement evolve: inadvertently or step by deceptive step?

May 1950 marks the beginning of direct United States involvement in Vietnam. This date also marks a reversal of American policy. Colonialism is supported economically and militarily by an American administration, but, of course, in preference to the only other alternative, Communism. The French colonial administration is to be provided "economic aid and military equipment ... in order to assist them in restoring stability and permitting these states to pursue their peaceful and democratic development."²⁷

United States involvement was to receive justification to become United States intervention on April 7, 1954. The justification - "what

you would call the 'falling domino' principle. You have a row of dominoes set up, you knock over the first one, and what will happen to the last one is the certainty that it will go over very quickly."²⁸ At this time within the Eisenhower administration direct military intervention by the United States on the side of France was being hotly debated. In fact, during the same month Secretary of State Dulles and Admiral Radford were twisting the arms of the British in an attempt to gain their endorsement for a plan that would send more than 200 American warplanes to strike at enemy positions near Dienbienphu. The British were advised that a joint resolution authorizing the strike was awaiting their approval before being sent by the Executive to the Congress. This bit of information prompted Churchill to explain the Dulles proposal to his cabinet in the following terms: "What we are being asked to do is assist in misleading the Congress (of the United States) into approving a military operation which would be itself ineffective, and might well bring the world to the verge of a major war."²⁹ The United States watched as Dienbienphu fell, and to Dulles, Dienbienphu was "a blessing in disguise. Now we enter Vietnam without the taint of colonialism."³⁰ Dulles saw the United States supplanting the French in Indochina after the Geneva Agreement had been signed in July, 1954. Dulles ceded the North to Ho Chi Minh, but decided that below the 17th parallel the United States would establish "a Western bastion against the Communists-exactly, we thought, what the South Vietnamese would want: our protection, our freedoms."³¹ The first answer was SEATO. The second was the Saigon Military Mission whose first member and chief entered Vietnam on June 1, 1954.³² By August, the membership had been increased to twelve, ten additional members having been slipped in to beat the August 11 deadline

set by the Geneva Agreements for a freeze on the number of foreign military personnel. The team was headed by Colonel Landsdale, a member of the CIA. The team, in South Vietnam under a MAAG cover, primarily carried out paramilitary operations and political-psychological warfare in Communist areas. One such operation included the pouring of contaminant in the engines of the Hanoi bus company.³³ Thus, covert operations against the Communists were carried on by the United States. This, of course, with the elections scheduled for July 1956 by the Geneva Agreements approaching.

And late in September, 1954, with Congress out of session, the Executive made the decision to send approximately 200 advisers to South Vietnam. At Secretary of State Dulles' urging, President Eisenhower invoked a provision of the foreign aid bill that allowed him without congressional approval to take 10 percent from one aid program and give it to another. Earmarking it for South Vietnam, President Eisenhower felt he should inform Congressional leaders of his decision. Thurston Morton was selected to inform Senator Russell of the Armed Services Committee. Replying that the level of advisers would not stay at 200, but eventually increase to 20,000 and perhaps some day 200,000, Senator Russell added that, "I think this is the greatest mistake this country's ever made. I could not be more opposed to it."³⁴

Summing up the Eisenhower years and the situation confronting President Kennedy in 1961, one Pentagon analyst concluded:

The US had gradually developed a special commitment in South Vietnam. It was certainly not absolutely binding-but the commitment was there ...

Without US support Diem almost certainly could not have consolidated his hold on the South during 1955 and 1956.

Without the threat of US intervention, South Vietnam could not have refused to even discuss the elections called for in 1956 under the Geneva settlement without being immediately overrun by the Vietminh armies.

Without US aid in the years following, the Diem regime certainly, and an independent South Vietnam almost as certainly, could not have survived ...

South Vietnam was essentially the creation of the United States. 35

President Kennedy in October, 1961 sent an eleven-man mission headed by General Maxwell Taylor and Walt W. Rostow to South Vietnam "to make 'an educated guess' about whether the United States would be required to send troops to stop Communist advances in Southeast Asia ..."³⁶ And on October 19, James Reston reported on the Taylor mission: "he is not likely to favor plunging blithely into a jungle war 7,000 miles from home where the landscape and the logistics favor the enemy ... General Taylor has certainly not gone there to organize an invasion."³⁷ And from E. W. Kenworthy on November 4:

Although some officials in the White House and the State and Defense Departments are known to favor the dispatch of American forces, there would be considerable surprise here if General Taylor recommended such a move ...

While opposing the sending of American combat forces, General Taylor is understood to favor the dispatch of necessary military technicians ... 38

What was General Taylor saying about recommendations he was to make to the President based on his mission to South Vietnam? He was declining comment "on whether he would recommend sending United States combat troops to stiffen the Vietnamese forces against the Viet Cong guerrillas."³⁹ He was reminded that he had said when leaving Saigon that "I have great confidence in the military capability of South Vietnam to cope with anything within its border and to defend the country against

conventional attack."⁴⁰ When told that this remark had been interpreted to mean South Vietnam's problem was not manpower, the General replied, "That is correct. It is a populous country."⁴¹ And how was this remark of the General's interpreted?

Officials said it was correct to infer from this that General Taylor did not look favorably on the sending of United States combat troops at this time. ⁴²

Finally, on November 16, Kenworthy wrapped it up in this article:

President Kennedy has decided on the measures that the United States is prepared to take to strengthen South Vietnam against attack by Communists.

The measures, which received final approval yesterday at a meeting of the National Security Council, closely followed the recommendations made by General Maxwell D. Taylor, the President's military adviser ...

The United States' plans do not include the dispatching of combat units at this time ...

Officials emphasized that President Kennedy and the National Security Council had not foreclosed the possibility of sending ground and air combat units if the situation deteriorated drastically. The President, it was said, does not wish to bind himself to a "never-position."

However, the President and General Taylor are agreed, according to reliable information here, that the South Vietnamese Government is capable of meeting and turning back the Communists' threat provided it speeds the training of its regular forces, solves the problem of mobility, develops a reliable intelligence system and adopts reforms in its military staff structure to free it from political interference. ⁴³

The "officials" whose "reliable information" was being reported had been truthful about President Kennedy's decision not to send "combat units at this time." But President Kennedy's decision was not based on General Taylor's recommendation. In fact, General Taylor had recommended "the introduction of a U.S. military force into SVN ... as an essential action if we are to reverse the present downward trend of events ..."⁴⁴

It is also clear that General Taylor did not agree as the "reliable information" to the effect that "the South Vietnamese Government is capable of meeting and turning back the Communists' threat ..." "In fact, without a force whose initial size should not exceed about 8,000 ... I do not believe that our program to save SVN will succeed."⁴⁵ McNamara, in a memorandum to the President on behalf of himself, Gilpatrick, and the JCS supported Taylor's recommendations.⁴⁶ So behind the scenes, in total secrecy, while the administration manipulates the press into deceiving the nation into believing that everyone in the Executive branch is agreed on the proposition that no United States combat troops are needed in South Vietnam, an intensive argument is in progress. All the President's advisers insist that South Vietnam without United States combat support will fail. The President remarks privately:

They want a force of American troops. They say it's necessary in order to restore confidence and maintain morale. But it will be just like Berlin. The troops will march in; the bands will play; the crowds will cheer; and in four days everyone will have forgotten. Then we will be told we have to send in more troops. It's like taking a drink. The effect wears off, and you have to take another. ⁴⁷

Yet, as Schlesinger remarks,

... he felt obliged to offer a small drink himself, and (so) he increased the number of military advisers. More drinks were still to come. At the end of 1961, there were 1346 American military personnel in South Vietnam; at the end of 1962, 9865; at the time of Kennedy's death in November 1963, about 15,500. This was the policy of 'one more step' - each new step always promising the success which the previous last step had also promised but had unaccountably failed to deliver. ⁴⁸

Would the total United States commitment in November 1963 have looked much different had Kennedy approved Taylor's recommendation of an initial task force of 8,000? First, it would no longer have been

"their war." The private nature of advisers in no way resembles the public nature of troops marching in and bands playing. Lost then is the chance to keep the commitment private. Enter then the Congress and the nation. In the spring of 1963 Kennedy told Senator Mansfield that he agreed with him on the need for a complete military withdrawal from Vietnam. "But I can't do it until 1965-after I'm reelected."⁴⁹ Combat troops would have made the commitment public and public commitments need the support of the public. Was it there in 1961? Or, with an eye on being reelected, always that eye on being reelected, was it better to keep the commitment private? Just a few advisers. They can be assigned with a minimum of publicity, a minimum of fuss. No need to worry about Congress, and the shouts for a declaration of war with a commitment of 8,000. No questioning of an Executive's authority to commit United States forces to foreign countries. No assertions of intervention in another nation's affairs, especially if it is a civil war. Just a few advisers training a nation's armed forces to resist blatant Communist aggression.

Kennedy's policy toward Vietnam, then, was to accelerate the war while denying that he was doing it. This policy was to prosecute a private war. He was willing to go it alone in Asia, but not to admit it. He disregarded the counsel of his advisers only to the extent that they preferred a public war.

The President, clearly, did not believe the American people would support him in his decision to escalate the level of combat. 50

Scheming to capture the elusive support of the American people, President Johnson could be excused for his deceptive words by explaining his September 28, 1964 statement as Presidential campaign rhetoric:

Some of our people-Mr. Nixon, Mr. Rockefeller, Mr. Scranton, and Mr. Goldwater-have all at some time or another suggested the possible wisdom of

going north in Vietnam. Well, now, before you start attacking someone and you launch a big offensive, you better give some consideration to how you are going to protect what you have. And when a brigadier general can walk down the streets of Saigon as they did the other day, and take over the police station, the radio station, and the government without firing a shot, I don't know how much offensive we are prepared to launch. As far as I'm concerned, I want to be very careful and cautious, and use it only as a last resort, when I start dropping bombs around that are likely to involve American boys in a war in Asia with 700 million Chinese.

So just for the moment I have not thought that we were ready for American boys to do the fighting for Asian boys. What I have been trying to do, with the situation that I found, was to get the boys in Vietnam to do their own fighting with our advice and with our equipment. That is the course we are following. So we are not going north and drop bombs at this stage of the game, and we are not going south and run out and leave it for the Communists to take over. Now we have lost 190 American lives, and to each one of those 190 families this is a major war. We lost that many in Texas on the Fourth of July in wrecks. But I often wake up in the night and think about how many I could lose if I made a misstep. When we retaliated in the Tonkin Gulf, we dropped bombs on their nests where they had their PT boats housed and we dropped them within 35 miles of the Chinese border. I don't know what you would think if they started dropping them 35 miles from your border, but I think that that is something you have to take into consideration.

So we are not going north and we are not going south; we are going to continue to try to get them to save their own freedom with their own men, with our leadership and our officer direction, and such equipment as we can furnish them. We think that losing 190 lives in the period that we have been out there is bad. But it is not like 190,000 that we might lose the first month if we escalated that war. So we are trying somehow to evolve a way, as we have in some other places where the North Vietnamese and the Chinese Communists finally, after getting worn down, conclude that they will leave their neighbors alone. And if they do, we will come home tomorrow. 51

But behind all of this fine rhetoric how did the situation really appear to Johnson and his inner circle, and what were they planning on doing about it? When he said, "So just for the moment I have not thought

that we were ready for American boys to do the fighting for Asian boys," was "moment" to be confined to the campaign and the period of time it would require him to be elected? Obviously the length of the campaign was not sufficient to "wear down" the North Vietnamese and the Chinese Communists without escalating the level of fighting.

"In the midst of an election campaign in which he was presenting himself as the candidate of reason and restraint as opposed to the quixotic Barry Goldwater," President Johnson and his advisers reached a "general consensus" during a White House meeting on September 7, 1964 that air attacks against North Vietnam "would probably have to be launched."⁵² In preparation for this strategy meeting at the White House, Assistant Secretary of Defense John T. McNaughton had readied a memorandum on September 3 for Secretary of Defense Robert S. McNamara in which he concluded:

Special considerations during the next two months. The relevant audiences of U.S. actions are the Communists (who must feel strong pressures), the South Vietnamese (whose morale must be buoyed), our allies (who must trust us as "underwriters"), and the U.S. public (which must support our risk-taking with U.S. lives and prestige). During the next two months, because of the lack of "rebuttal time" before election to justify particular actions which may be distorted to the U.S. public, we must act with special care-signaling to the D.R.V. that initiatives are being taken, to the G.V.N. that we are behaving energetically despite the restraints of our political season, and to the U.S. public that we are behaving with good purpose and restraint. 53

We know how President Johnson communicated this sense of restraint to the American voter. On August 18 Ambassador Maxwell D. Taylor had cabled from Saigon proposing "a carefully orchestrated bombing attack on NVN, directed primarily at infiltration and other military targets" with "Jan. 1, 1965, as a target D-Day."⁵⁴ In an August 26 memorandum

to Secretary McNamara, the Joint Chiefs of Staff agreed with Ambassador Taylor and added that an air war against North Vietnam was now "essential to prevent a complete collapse of the U.S. position in Southeast Asia."⁵⁵ The Pentagon analyst reporting this period of the war in the Pentagon Papers calls this memorandum the first appearance of a "provocation strategy" that was to be discussed at the September 7 White House meeting.⁵⁶ In his words, the Joint Chiefs' memorandum proposed "deliberate attempts to provoke the D.R.V. into taking actions which could then be answered by a systematic air campaign."⁵⁷ It was, however, McNaughton's memorandum⁵⁸ that outlined several means of provocation which, before culminating in a sustained air war, could be used to produce North Vietnamese actions to which it would be possible to respond with acts of reprisal; this, as the analyst notes, permit postponing "probably till November or December any decision as to serious escalation."⁵⁹ This would allow President Johnson to continue rejecting during his Presidential campaign advice "to load our planes with bombs and to drop them on certain areas that I think would enlarge the war and escalate the war, and result in our committing a good many American boys to fighting a war that I think ought to be fought by the boys of Asia to help protect their own land."⁶⁰

A majority of the officials at the September 7 White House meeting rejected the adoption of a provocation strategy which would lead to reprisal air attacks.⁶¹ The President did, however, order resumption of certain covert operations, which included DeSoto patrols and 34A coastal raids, and did say the United States "should be prepared" to launch "tit for tat" reprisal air strikes like those during the Tonkin Gulf incident "as appropriate against the D.R.V. in the event

of any attack on U.S. units or any special D.R.V. - V.C. action against S.V.N."⁶² And on November 1, 1964, two days before the election, a Vietcong mortar attack on Bienhoa airfield killed four Americans, destroyed five B-57 bombers and damaged eight. No "tit for tat" reprisal air strikes were launched against North Vietnam that day, the following day, or on November 3, election day. But 95 days later when, on February 6, 1965, the Vietcong attacked a United States military advisers' compound at Pkeiku, the President retaliated with air raids on the North. And when again on February 11 the Vietcong attacked an American barracks at Quinhon, the President launched a second and heavier reprisal raid. Two days later, on February 13, he ordered Operation Rolling Thunder implemented, and the sustained air war against North Vietnam had begun.

By April 1965, it had become clear to the Johnson Administration that Operation Rolling Thunder was not going to prevent the collapse of the South. Bombing North Vietnam, after all, was not the answer to breaking the enemy's will and persuading Hanoi to stop the Vietcong insurgency in the South. Pentagon analysts sum it up in the following manner: "Once set in motion, however, the bombing effort seemed to stiffen rather than soften Hanoi's backbone, as well as the willingness of Hanoi's allies, particularly the Soviet Union, to work to a compromise."⁶³ The study continues: "Official hopes were high that the Rolling Thunder program would rapidly convince Hanoi that it should agree to negotiate a settlement to the war in the South. After a month of bombing with no response from the North Vietnamese, optimism began to wane."⁶⁴

The bombing had begun on a sustained basis on March 2, 1965. Two

Marine battalions had landed at Danang on March 8. On April 1, 1965, President Johnson decided to use ground troops for offensive action in South Vietnam, and ordered that decision to be kept secret.⁶⁵ The initial mission directed the two Marine battalions to provide the static defense of Danang airfield. The order now changing this to an offensive mission, directing an 18-20,000 man increase in United States military support forces, and approving the deployment of two additional Marine Battalions and one Marine Air Squadron was contained in National Security Action Memorandum 328, dated April 6, 1965.⁶⁶ The final paragraph of Memorandum 328 stated the President's desire that "premature publicity be avoided by all possible precautions, and that though these actions "should be taken as rapidly as practicable ... (they) should minimize any appearance of sudden changes in policy."⁶⁷ On March 31, the day before his April 1 decision to change the mission of the Marines from static defense to offensive, the President was saying to the press, "I know of no far-reaching strategy that is being suggested or promulgated."⁶⁸

In a June 7 message to the Joint Chiefs, General Westmoreland asked for a force totaling the equivalent of 44 battalions in order to meet the worsening situation in South Vietnam.⁶⁹ When in July President Johnson announced that he was sending additional troops to South Vietnam to meet General Westmoreland's request, he was asked during the questioning after the announcement:

Q. Mr. President, does the fact that you are sending additional forces to Vietnam imply any change in the existing policy of relying mainly on the South Vietnamese to carry out offensive operations and using American forces to guard installations and to act as emergency back-up?

A. It does not imply any change in policy whatever. It does not imply change of objective. 70

Of the decision in July to commit 44 battalions of troops, the Pentagon analyst writing the study described it as being "perceived as a threshold-entrance into an Asian land war. The conflict was seen to be long, with further U.S. deployments to follow. The choice at the time was not whether to hold on for a while or let go-the choice was viewed as winning or losing South Vietnam."⁷¹

And what of the candidate who had a Republican plan to end it all. Refusing to define it, he said, "I don't believe a presidential candidate now should say, 'This is what I will do in January.'"⁷² Stressing a program of Vietnamization, or as it was sometimes called, de-Americanization, he stated:

... It is a cruel irony that the American effort to safeguard the independence of South Vietnam has produced an ever-increasing dependency in our ally. If South Vietnam's future is to be secure, this process must now be reversed.

At the same time, we need far greater and more urgent attention to training the South Vietnamese themselves, and equipping them with the best of modern weapons. As they are phased in, American troops can be phased out. This phasing-out will save American lives and cut American costs. 73

What candidate Nixon did not state to the American people was that while President Nixon planned the gradual withdrawal of American ground troops, he also planned the simultaneous escalation of certain aspects of the war to prevent the collapse of the regime in Saigon. And the length of time to execute his plan was left unstated. How would four years have been received by the voters? Four years which saw President Nixon order the invasion of Cambodia in April, 1970; order the heaviest air raids on North Vietnam since 1968 in December, 1971, in retaliation for Communist build-up and offensive; suspend the Paris peace talks March 23, 1972 until North Vietnam showed willingness for "serious discussions";

order the bombing of Haiphong and Hanoi April 15, 1972 in retaliation for the two-week old North Vietnamese offensive; announce on May 8, 1972 a decision to mine North Vietnamese ports and increased bombing of the North; and order in December 1972 the "carpet bombing" of Hanoi and Haiphong.

And bombing was the "stick" used by the Nixon Administration to maintain the Saigon regime in power. As with all Nixon foreign policy, this was wrapped in a shroud of secrecy from the American people and the Congress. When Senator Kennedy asked to be told the "rules of engagement" governing air and naval strikes on North Vietnam, J. Fred Buzhardt, general counsel of the Defense Department, replying for the Defense Department, stated that the rules are "highly sensitive documents ... very closely controlled because of their obvious and inestimable value to the enemy. To expose the rules governing the conduct of combat operations is to risk jeopardizing the lives of United States personnel ... and would otherwise be detrimental to national security."⁷⁴ The Pentagon is saying here that the rules of bombing are established to meet the particular conditions of a situation, but whatever they are we can't be bound by stating them and then being held to them. Senator Kennedy also asked to be shown before-and-after photographs of populated areas claimed by North Vietnamese propaganda to have been subjected to American bombing. This time Buzhardt, referring to the "patently propagandistic character" of Hanoi's allegations of bombs striking dikes, replied "no useful purpose could emerge from the study of photographs which for military security reasons would mostly not be releasable to the public."⁷⁵ In an administration cloaked with secrecy and deception, the sequence of administration responses to allegations about the bombing

of dikes and dams in North Vietnam in 1972 is typical:

April 30-President Nixon:

It would result in an enormous number of civilian casualties. That is something we want to avoid.

May 9-New York Times:

In Washington a Pentagon spokesman said it was possible that North Vietnamese missiles fired at the American planes, had missed and fallen back on the dikes.

June 9-New York Times:

In an afternoon briefing, Lt. Gen. George J. Eade of the Air Force also denied that the dikes had been hit. "We haven't targeted any dikes," General Eade said in a review of the bombing campaign. He also said that he was not aware of any dikes struck by accident.

July 13-New York Times:

Mr. Henkin said: "We have stated that there is always a possibility that dikes may be hit."

July 16-New York Times:

Another military source said: "A military target is targeted, and if it happens to be near a dike, then it gets hit."

July 17-Secretary Laird:

Now, there are occasions, of course, when a dam or dike could possibly be hit when an anti-aircraft installation is placed on a dam or a dike or when there is a roadway or a bridgework that is also tied in with a dam or dike formation. There may have been one or two examples of that kind of military target where an anti-aircraft battalion or battery is located in a region where there are various water reservoirs or dams or dikes.

July 26-State Department press officer Charles Bray:

There has been no indication of any but the most incidental and minor impact on the system of levees as a result of our strikes against military installations.

July 27-President Nixon:

If it were the policy of the United States to bomb the dikes, we could take them out ... in a week.

July 28-State Department intelligence report:

A few dikes have been hit by stray bombs directed at military associated targets nearby ... Bomb craters were detected at 12 locations. Because a large number of North Vietnamese dikes serve as bases for roadways, the maze they create throughout the delta makes it almost inevitable that air attacks directed against transportation targets cause scattered damage to dikes. 76

In an era of escalating rhetoric an inverse relationship between it and deception may be established: As the rhetoric is escalated, the level of deception diminishes. Decisions arrived at in secret meetings and executed with a minimum of explanation provide fertile ground for the seeds of deception. Decisions made in private, but exposed to public scrutiny, provide no such chance for deception. And finally decisions arrived at in a public forum are those born in truth.

Southeast Asia II-Cambodia

One more example of a decision arrived at in secrecy begins with the administration statements veiled in deception to soften the impact on the Congress and the American people of a change in policy, and follows a progression of escalating rhetoric until gradually the truth emerges plainly for all. The invasion of Cambodia by United States and South Vietnamese forces on April 30, 1970 and the widening commitment by the United States government to the Lon Nol government is a study in rhetorical subterfuge:

March 23, 1970-Secretary Rogers:

Cambodia has not made any request for military assistance ... We don't anticipate that any request will be made.

April 15, 1970-Secretary Laird:

I have said often that I will not recommend troops going to Laos or to Cambodia or to any other place without the consent of the Congress ... Now I feel that very strongly. (Laird made this comment on the same day that he sent the President his endorsement of General Abram's ideas about sending troops into Cambodia.)

May 5, 1970-Secretary Laird:

We are not going to get involved with the Cambodian Army or with military operations in Cambodia.

May 8, 1970-President Nixon:

I would expect that the South Vietnamese would come out approximately at the same time we do because, when we come out, our logistical support and air support will also come out with them. (The South Vietnamese stayed.)

May 13, 1970-Secretary Rogers:

That's correct! The question was whether what you're ruling out, only, is that we will not get involved directly, militarily, in supporting the Lon Nol Government.

June 3, 1970-President Nixon:

The only remaining American activity in Cambodia after July 1 will be air missions to interdict the movement of enemy troops and material where I find that is necessary to protect the lives and security of our men in South Vietnam.

June 23, 1970-Secretary Rogers:

It is obvious, of course, that there will be times when, in the process of interdicting supply lines or communication lines of the enemy, that that will be of direct benefit to the present government in Cambodia ... Obviously air interdiction may have purposes and at the same time serve the Cambodian government.

July 1, 1970-President Nixon:

I am going to use, as I should, the air power of the United States to interdict all flows of men and supplies which I consider are directed towards South Vietnam.

August 23, 1970-Vice-President Agnew:

We're going to do everything we can to help the Lon Nol government (because) the whole matter of Cambodia is related to the security of our troops in Vietnam.

August 24, 1970-State Department spokesman Robert J. McCloskey:

The Vice-President's comments do not change or expand American policy towards Cambodia.

During testimony before the Senate Committee on Foreign Relations on May 13, 1970,⁷⁸ Daniel Ellsberg, speaking of the Tonkin Gulf incident, was saying "that the Administration then at least paid Congress the respect, in effect, of manipulating or tricking or misleading Congress,"⁷⁹ when Senator Fulbright interrupted to comment on the Nixon administration's handling of the Cambodian invasion: "They don't even deign to deceive us now."⁸⁰ Senator Fulbright went on to add:

In a sense I think we were deceived. We had an executive hearing purportedly to discuss a request by the Cambodian Government for assistance. The decision to invade was already under consideration and preparation had been made. Not having known of that decision, we didn't ask specific questions, but I think under the circumstances if the Administration had any respect for the Congress' views or its participation, they would have volunteered the information that they were considering it or had made the decision. While it wasn't an overt or obvious deception such as the testimony of the Secretary of Defense on the Tonkin Gulf incident, it was a failure to say what they had in mind and their intentions under circumstances, where if there were any respect for the Committee and the Senate they would have volunteered the information. I think it is fair to say that because the hearing on the Cambodian request for aid took place only two days before the first move into Cambodia. It is inconceivable that that kind of an operation can be made without at least two days of preparation. 81

Southeast Asia III-Laos

On November 23, 1971, the Senate debate over a floor amendment to place a \$4-billion annual ceiling on United States intelligence activities triggered the following exchange between Allen J. Ellender (D-La.), Chairman of the Appropriations Committee and head of its five-man Intelligence Operations Subcommittee, and J. W. Fulbright (D-Ark.) and Alan Cranston (D-Calif.):

Fulbright: Would the Senator (Ellender) say that before the creation of the army in Laos they (the CIA) came before the committee and the committee knew of it and approved it?

Ellender: Probably so.

Fulbright: Did the Senator approve it?

Ellender: It was not-I did not know anything about it.

Fulbright: So the whole idea of Congress declaring war is really circumvented by such a procedure, is it not?

Ellender: Well, Mr. President, I wish to say that-

Fulbright: Is it not?

Ellender: No, I do not think so.

Fulbright: Well, if you can create an army and support it through the CIA, without anyone knowing it, I do not know why it is not ...

Ellender: I wish to say that I do not know. I never asked, to begin with, whether or not there were any funds to carry on the war in this sum the CIA asked for. It never dawned on me to ask about it. I did see it publicized in the newspaper some time ago.

Cranston: ... The chairman stated that he never would have thought of even asking about CIA funds being used to conduct the war in Laos ... I would like to ask the Senator if, since then, he has inquired and now knows whether that is being done?

Ellender: I have not inquired.

Cranston: You do not know, in fact?

Ellender: No.

Cranston: As you are one of the five men privy to this information, in fact you are the number one man of the five men who would know, then who would know what happened to this money? The fact is, not even the five men know the facts in the situation.

Ellender: Probably not. 82

On January 27, 1971, Senator Fulbright, chairman of the Senate Foreign Relations Committee, had written a letter to Defense Secretary Melvin R. Laird, in which he included a number of questions on Laos. An April 14 reply from the Pentagon which refused to answer the Senator's questions on Laos stated: "It would not be appropriate to disclose outside the Executive Branch highly sensitive information on military combat operations of the kind your questions would elicit if answers were to be provided."⁸³

On June 7, 1971, the Senate met in secret session, and was briefed on Laos by Senator Stuart Symington from a Foreign Relations Committee staff report. A sanitized version of the staff report was released on August 3 by the executive branch. It stated that about \$70 million was used by the CIA in 1970 to support an army of more than 30,000 irregulars in Laos.⁸⁴ The report admitted:

The CIA supervises and pays for the training of these irregulars in Thailand, and provides their salary, allowances (including death benefits and operational costs) in Laos ... The Thai irregulars are transported from Thailand to Laos by Air America (the private airline sponsored by the CIA) and are returned to Thailand when their tours are up again. 85

Of interest at this point are two provisions of the 1971 Defense Department Appropriation bill:

Nothing ... hereunder shall be construed as authorizing the use of any such funds to support Vietnamese or other free world forces in actions designed to provide military support and assistance

to the government of Laos.

Provided further, that nothing contained in this section shall be construed to prohibit support of action withdrawal or disengagement of U.S. forces from Southeast Asia or to aid in the release of Americans held as prisoners of war. 86

In response to a letter of inquiry sent by Senator Clifford Case of the Foreign Relations Committee on any agreements between the United States and Thailand by which the Thai troops were being imported into Laos against the provisions of United States law, Assistant Secretary of State David M. Abshire answered:

... We believe that it has been made clear that this is not a question of U.S. support for regular Thai forces in Laos. The irregular forces involved, while raised and trained in Thailand, are all one-year volunteers who go to Laos to serve under the command of the Royal Lao government. They are recruited in Thailand, not Laos. 87

Of course, the "safe and orderly withdrawal" of United States forces from Vietnam provides for the Nixon administration a convenient escape.

The question here, however, involves an entire army recruited, equipped and paid by American money, trained by American personnel and fighting under American advisers, all unknown to the American Congress and the American people. By 1971 the United States had indeed reached a point where its government no longer felt it necessary to deceive the Congress or the people; it chose instead simply to operate clandestine armies, thus bypassing in its entirety the constitutional framework for such matters, including the budgetary process, the raising and supporting of armies and the war power.

Notes

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CHAPTER VI

THE POWER TO DECEIVE - TODAY AND TOMORROW

War does not always give democratic societies over to military government, but it must invariably and immeasurably increase the powers of civil government; it must almost automatically concentrate the direction of all men and the control of all things in the hands of the government. 1

Alexis de Tocqueville

War centralizes power; and deception and secrecy is a necessary condition of centralizing power. As the government moves closer and closer toward autocracy, the question becomes less one of deception of the legislature and the people and more one of maintaining the autocrat in power. Thus no President could afford to be labeled the "President who lost Vietnam." Practices that thirty years ago would certainly have been called autocratic were in the early 1970's accepted as normal practice. These included increasing use of the executive agreement in place of the treaty to conduct most aspects of foreign policy; almost complete reliance by the Executive on an internal group of personal advisers, which included a foreign policy adviser who excluded the State Department from all but minor questions of foreign policy; and executive privilege carried to an illogical extreme if we are to assume we continue to believe in the exercise of checks by the Legislature on the Executive and in an informed electorate. And the inevitable result of these practices was an unacceptable degree of secrecy and deception in government.

For the war power this tendency to centralize power by the Executive meant essentially a complete transfer of the capability to take the nation to war from the Congress to the Executive. But as the

Executive usurped the power, so too did the Congress surrender. And when the war power was used to pursue objectives known to be unpopular among the Congress and the people, it was cloaked in secrecy by the Executive. Deception became the acceptable method to protect the secrecy of an unpopular decision adopted by a President exercising his usurped powers of war.

Before 1940, while the Congress continued to play its constitutional role in decisions to take the nation to war, deception played little or no part. Deception finds very few opportunities to play a part in decisions arrived at among many people. It is argued that a public forum is awkward, slow and too open to be compatible with the secret diplomacy and foreign policy necessary to this day and age of modern technology. But the resultant deception and secrecy involved in concentrating power over foreign policy and especially the power of war in the Executive is scarcely more compatible with a democracy in which decisions are arrived at by the representatives of the people.

Before this country embarked upon war, that gravest of human acts, the Founding Fathers wanted the decision to be subjected to lengthy and searching debate by the representatives of the people. This country might go to war for the wrong reasons, it might go to war unjustly as we undoubtedly have in some of our wars, but the decision would be made by the representatives of the people. 2

Notwithstanding this axiom of democracy, we found ourselves at the extreme of the process to centralize the power of war in the Executive.

In leading the nation to war in 1940 and 1941 President Roosevelt knew he was embarked on an unpopular path. However, his Presidency from 1932 to 1940 had enabled him to consolidate the power to keep from the Congress and the people the unpopular decision he was ultimately to make. Through a series of gradually escalating actions he carried the

nation through a policy which he maintained to the end was designed to keep the United States from war. Yet the series of decisions could scarcely have been more designed for war than if he had asked Congress for a declaration of war at the start of hostilities.

President Truman inherited the power intact. In Korea he committed the nation to war under the guise of a United Nations' action, which it did become in name only. By now there was little question the power to do so was his. The only stumbling block was giving it the appearance of a concerted action by member nations of the United Nations. He took action on his own authority as President, announced his decision to the Congress and the people, and then proceeded to arrange to have the United Nations sanction his action as its own. As a sidelight, he committed the nation to France's colonial cause in Indochina.

By the end of Truman's term the power to make war was firmly in the hands of the Executive, and each subsequent President saw and realized the necessity to exercise it in secret. There are very few ways to paint a war popular. No President saw a direct method to do so, but each perceived how through indirect tactics couched in deceptive terms he could make it appear less evil than in reality it was. And so it was to proceed until in 1970, with the invasion of Cambodia, Senator Fulbright was to say, "They don't even deign to deceive us now."³

At that point the Executive found little need or reason to consult the Congress in the area of foreign policy. No statistics made this plainer than the comparison between the executive's initiation of treaties and its use of executive agreements. In 1930 the United States concluded 25 treaties and only nine executive agreements. On the other hand, in 1968 the United States concluded 16 treaties and 266 executive

agreements. By January 1, 1972 the United States had a total of 947 treaties and 4,359 executive agreements.⁴ Exclusion of the Congress from foreign policy was the rule rather than the exception.

The other development centralizing power in the executive was the use of a handful of personal advisers to bypass normal governmental processes. This allowed the executive to remove decisions from governmental departments subject to Congressional scrutiny, thus effectively excluding the Congress and therefore the people from the decision-making process. This practice prompted Townsend Hoopes to remark of the Nixon administration:

... They do not consult with Congress or even the State Department; they make no effort to develop broad public support for their policies; they ignore their critics; and they show something less than a decent respect for the opinion of mankind. Mr. Nixon gets away with it because the other elements of America's political system are no match for the President's power of initiative, his control of the war machine, his capacity to manipulate information and events under the inherently fluid and confusing conditions of war. 5

No weapon is more potent or more dangerous than a President's use of executive privilege to maintain a cloak of secrecy around his actions and decisions. President Nixon claimed for his advisers an executive privilege that not only encompassed them while in his administration but was to endure after they left. Such claims, and actions to back these claims, caused Clark Mollenhoff to write of the Nixon Administration that it "has permitted the establishment of precedents that any future President might use to impose a total blackout on essentially all acts performed by White House staff as his 'confidential advisers.'"⁶

Two such decisions in recent times illustrate well the isolation of the executive. In 1971 President Nixon announced on nationwide television his decision to go to China as part of his new China policy.

That same year, again on nationwide television, the use of which, according to Fred Dutton, "to lock in such decisions amounts simply to harnessing the most powerful propaganda tool ever developed to move toward one small office rule,"⁷ the President outlined his new economic policy. The decisions themselves "were prepared totally in secret," and as with most decisions affecting the vital interests of the nation in past years

... without consultation with the congress, many of the relevant resources of the Executive branch, or the vital centers of thoughtfulness and experience in the country, a handful of men took action affecting the most basic and long range U.S. relationships with the rest of the world and then actions affecting the very nature of the U.S. economy and consequently of our society. 8

There was no attempt in advance to indicate a possible shift of direction by the executive; rather, "right up to the last minute he misled in the economic area with administration statements almost the opposite of what he finally did."⁹ There it was on television, and so it was that the nation and especially the Congress were presented with a fait accompli. The increased centralization of the American system which results from these two actions seriously jeopardizes "the premises of a free, open and democratic or republican form of government ... when a major historical course is set without real public discussion beforehand."¹⁰

Executive power, both in domestic and foreign policy, continued to be expanded by the Nixon administration, which at the same time was further excluding Congress from any meaningful part in decision making processes. However, Executive war power was given a veil of legality with the passing of the War Powers Resolution in 1973 over the veto of President Nixon.¹¹ As the Executive expanded executive privilege,

constricted his group of close personal advisers, conducted foreign policy in secret, and concluded executive agreements in the place of treaties, the Congress struggled to regain a portion of its lost power by means of the Javits bill, which became the War Powers Resolution. The tragedy here is that the Congress, desperately seeking to recover its lost power, passed into law a resolution which would likely be determined to be unconstitutional if tested in the Courts for it gave the President a power that would enable him to do that which he is not empowered by the Constitution to do. The Congress would legalize Presidential wars of a 60-day duration, in order to be afforded the opportunity to decide its continuance after 60 days. The resulting situation, confusing though it may be, would, in violation of the Constitution, undertake to legalize a power the President as a practical matter has anyway today, and would deny to the Congress a power given by the Constitution, which it does not have today. This, so that the Congress might ultimately, after 60 days (in nuclear war a meaningless measure of time), decide to stay in a war begun by the President. And how does one stop a war after 60 days? What Congress is settling for then is a power to rubber stamp Presidential wars. President Nixon vetoed the War Powers Resolution because he did not recognize this power in the Congress.

President Nixon's Christmas bombing of Hanoi in 1972 marked the apex of Presidential use of the warpower. Called by Tom Wicker "perhaps the most imperial military decision in American history," he says of the decision that it "apparently was not discussed even with his own Joint Chiefs of Staff."¹² As for Max Lerner's opinion of President Nixon's action:

... He has set a precedent in the naked use of power which other nations will remember, and which they may decide someday to follow.

Never has the need for some explicit limitations on the President's use of his warpower been clearer. The bombing of Hanoi will not easily slip from peoples' memories. When they think of American power, are they not likely to remember that an American President used it to enforce his policy by terror? This is why, even more important than the proposals to cut off war spending, a new war-powers bill or amendment is a crucial priority. 13

So obvious is the control of the war power by the Executive today, that today and tomorrow he does not deign to deceive on the use of it. But is it a situation to be corrected by an amendment or a law, or a rereading of the Constitution? Obvious as is the control of the war power by the Executive today, equally obvious is the test of the Constitution expressing the framers' intention that the war power reside with Congress. The removal of the power to declare war, and with it the power to deceive, from the Executive is not work for an amendment or a law; it calls for the recognition of the Constitution by the Executive and the reassertion of power by the Congress.

Notes

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APPENDICES

APPENDIX A

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(1) Military Actions Abroad Under a Declaration of War

1812-1815 - Great Britain: On June 18, Congress approved a declaration of war against Great Britain.¹

1846-1848 - Mexico: President Polk's occupation of disputed territory precipitated the Mexican War. Congress provided a declaration of war on May 13, 1846.²

1898 - Spain: On April 25, Congress passed a declaration of war against the Kingdom of Spain.³

1917-1918 - World War I.⁴

1941-1945 - World War II.⁵

(2) Individual Actions Specifically Authorized by Congress

1798-1800 - Navy War With France: This "quasi-war" was initiated and supported by several acts of Congress.⁶ Fought primarily for the protection of free commerce, Congress authorized certain acts of hostility in coastal waters and on the high seas. One such act authorized the President of the United States:

to instruct the commanders of the public armed vessels which are, or which shall be employed in the service of the United States, to subdue, seize and take any armed French vessel, which shall be found within the jurisdictional limits of the United States, or elsewhere, on the high seas ... 7

1801-1805 - Tripoli: The Pasha of Tripoli, no longer satisfied with the tribute paid to North African pirates by the United States, declared war in May 1801. President Jefferson had already sent a naval squadron to the Mediterranean.⁸ He informed Congress of the state of affairs and in February, 1802 Congress passed a resolution⁹ that instructed the President in such clear and strong terms "to conduct a naval war against a named adversary, (that) there seems to be no reason (it) should not be called a formal declaration of war."¹⁰

1806-1810 - Gulf of Mexico: American gun boats during this period initiated operations against Spanish and French privateers.¹¹

1812 - Amelia Island and other parts of East Florida, then under Spain: The Congress by special act authorized the President to take temporary possession of specific territory in order to prevent occupation by another power.¹² However, when General George Matthews took control

by appointing himself the head of a revolutionary party, President Madison disavowed his actions on the ground that the conditions of the statute had not been met.¹³

1813 - West Florida (Spanish Territory): Special legislation by Congress authorized the President to take possession of territory to the West of the Perdido River.¹⁴ Under this authority General Wilkinson seized Mobile Bay in April with 600 soldiers.¹⁵

1815 - Algiers: Beginning in 1812 an Algerian naval squadron operated against American shipping in the Mediterranean. When at the conclusion of the War with Great Britain, the Congress could turn its attention to Algiers, it passed an act instructing the President to take appropriate measures to protect American commerce.¹⁶

1859 - Paraguay: Congress authorized the Navy to seek redress for an attack on the U.S.S. Water Witch in the Panama River in 1855. Under statutory authority a naval squadron performed a demonstration of force and elicited compensation from Paraguayan authorities.¹⁷

1914 - Mexico: Congress belatedly authorized the seizure of Vera Cruz with the following resolution:

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled,
That the President is justified in the employment of the armed forces of the United States to enforce his demand for unequivocal amends for certain affronts and indignities committed against the United States: be it further

Resolved, That the United States disclaims any hostility to the Mexican people or any purpose to make war upon Mexico. 18

(3) Landings to Protect American Citizens and their Property After 1865

1865 - Panama - March 9 and 10: Quite unexpectedly, on March 9, 1865, a revolution erupted at Panama, prompting the American consul there to request Captain Edward Middleton of the U.S.S. St. Marys to land forces for the protection of the lives and property of American residents. Permission to land was obtained from Vice-President Calancha, acting head of the government. A small detachment of marines was landed and remained overnight. They returned to the St. Marys the next day.¹⁹

1868 - Japan (Osaka, Hiogo, Nagasaki, Yokohama, and Negata) - February 4-8, April 4 - May 12, June 12 and 13, September 25: The Japanese ports of Osaka and Hiogo were opened to foreign trade on January 1, 1868. Disruption of ancient Japanese customs by the opening of trade with the West caused hostile acts toward foreigners. When on February 4 foreign residents of Hiogo were attacked by Japanese soldiers and a member of the crew of the U.S.S. Oneida was wounded, an American landing force was dispatched to protect American interests in Hiogo. Subsequently, forces were landed by the U.S.S. Shenandoah at Nagasaki on February 8 and at Yokohama on April 3 and July 13, and by the U.S.S. Piscataqua at Negata on September 25.²⁰

1868 - Uruguay - February 7-8, 19-26: At the request of Governor Flores of Montevideo, American landing forces were employed to protect foreign residents and the customs house during a political disturbance. The following day the force was withdrawn, but when Governor Flores

was assassinated the landing force was returned on February 19 to protect American citizens and their property.²¹

1868 - Colombia - April 7: On April 7, 1868, during the absence of law authorities in Aspinwall, local residents, acting in a lawless manner, poured into the streets. Fearing a possible outbreak of violence, an agent of one of the steamship companies in Aspinwall requested protection from the commanding officer of the U.S.S. Penobscot for the passengers and treasure at the port.²²

1873 - Colombia (Bay of Panama) - May 7-22, September 23 - October 9: In 1873, upon three separate occasions, the senior naval officer found it necessary, in his opinion, to land American forces at Panama to protect American lives and property. In May 1873, two landings were made at Panama "at the request or with the permission of the authorities, or under an admission on their part, of their inability to promise the security and protection due from them."²³ The first landing on May 7 had been arranged to protect the property and station of the Panama railroad under Rear Admiral Charles Steedman's authority; however, when on the evening of May 7, the United States Consul requested an additional one hundred and fifty marines be landed to protect himself and others in the town of Panama, Admiral Steedman denied the request. He did not feel justified in landing a force after dark, occupying a hostile city, and possibly exceeding his authority were he "to land men on the soil of a friendly power without the consent of the authorities."²⁴ However, the next morning, having been assured that the leaders of both contending parties in Panama agreed with the United States Consul's request,

Admiral Steedman landed an additional force of one hundred men.

When on September 24 more violence appeared ready to erupt in Panama, the Governor of Panama notified the United States Consul of his inability to protect and guarantee the safety of the Panama railroad. Responding to the Governor's admission, Admiral John J. Almy landed a force of one hundred thirty men from the U.S.S. Benecia and Pensacola with orders to protect the Panama Railroad Station.²⁵

In effect at this time was the naval regulation issued in 1870. Outlining the duties of the commander-in-chief, it states, "He will also duly consider such information as ministers and consuls of the United States on foreign stations may have to give him relating to the interests of the United States, but he will not receive orders from such sources, and he will be responsible to the Secretary of the Navy, in the first place, for his acts."²⁶ This provision in the 1870 regulation possibly explains Admiral Steedman's hesitancy to act immediately on the United States Consul's requirement for additional men. Though acting on information supplied by the Consul, Admiral Steedman in exercising his discretion to land forces was acting, in the first place, on his responsibility to the Secretary of the Navy and not to the consular service.

1874 - Hawaiian Islands - February 12-20: On the occasion of the election of a new king of the Sandwich Islands on February 12, a dispute within the royal family led to disturbances, and prompted the Hawaiian Minister of Foreign Affairs to request the landing of a force from the U.S.S. Tuscarora.²⁷ The force was landed by the commander of the Tuscarora "to aid in restoring order, and to be in readiness to protect the interests of our own citizens should they be jeopardized."²⁸

Though restoring order is a questionable mission for the United States Navy, undoubtedly protecting the interests of American citizens does meet the requirements set by the regulations of 1865 and 1870.

1876 - Mexico - May 18: On May 18, at the request of the American Consul at Matamoros, the commander of the U.S.S. Lackawanna landed a small force to protect American lives and property between the retreat of a revolutionary army and the advance of a national party. The force was withdrawn as soon as the authority of the legitimate government was restored.²⁹

1882 - Egypt - July 14-18: As a result of hostilities between the British and the Egyptians in Alexandria, Rear Admiral Nicholson, commander of the United States Naval Forces in the European Station, ordered the U.S.S. Galena to Alexandria, and proceeded there himself with his flagship the U.S.S. Lancaster. When the Admiral arrived at Alexandria he found the Arabs burning and looting the city. He ordered a landing force into Alexandria to protect American interests and property there.³⁰

1885 - Panama (Colon) - January 18 and 19: On January 18, the commander of the U.S.S. Alliance telegraphed the Secretary of the Navy informing him of a revolution in progress in Panama. He further informed the Secretary of the Navy that the President of Panama had expressed his inability to provide adequate protection for the property of the Panama Railroad Company. The Superintendent of the railroad, that same day, requested a protective force from the United States Consul at Colon.

The consul in turn passed the request to the Commander of the Alliance, who acted immediately to provide the landing force to protect the property of the railroad.³¹

In April of the same year numerous landings were carried out directly under the supervision of the Navy Department, ostensibly in fulfillment of obligation incurred by the Treaty of 1846 with New Granada.³² Since the neutrality of the isthmus was not threatened by a foreign nation, the landings were not made by authority of stipulations in the 1846 treaty, but rather by provisions in Naval regulations establishing a commander's authority to carry out such landings.

1888 - Korea - June: During the year 1888, political conditions in Korea remained constantly in turmoil. Consequently, a portion of the Asiatic Fleet remained off the shore of Korea continuously. In June, the American Minister to Korea requested an armed detachment to land from the U.S.S. Essex and march to Seoul to protect the American residents of the city. The commander of the Essex complied with the Minister's request, and a force was duly landed.³³

1888-89 - Samoa - November 14, 1888 - March 20, 1889: During the Mataafa-Tamasese civil war, United States Marines were landed at the request of the American Consul General at Apia from the U.S.S. Nipsic to protect American lives and the American Consulate there.³⁴

1889 - Hawaiian Islands - July 30-31: Following a consultation between the United States Minister to Hawaii and the commander of the U.S.S. Adams, by agreement a force of marines was landed to protect

American interests and property during a revolutionary disorder in Honolulu.³⁵

1890 - Argentina - July: During a revolutionary disorder in progress in the province of Buenos Aires, the U.S.S. Tallapoosa landed a small force to protect the American Consulate and the residence of the American Minister.³⁶

1891 - Navassa Island, Haiti - April: In April 1891 the Navy Department ordered the U.S.S. Kearsarge to Navassa Island to determine the seriousness of reported outbreaks of violence on the island. Once there, the commander of the Kearsarge discovered that the Negro laborers employed on the island were out of control, and so ordered a detachment of marines ashore to protect American lives and property.³⁷

1891 - Chile - August 28-30: During a civil war in Chile, the violence in Valparaiso caused a number of women and children to seek refuge in the United States Consulate. Consequently, an armed force from the U.S.S. San Francisco and the U.S.S. Baltimore was landed to protect them and the American Minister, who was extremely unpopular with one of the factions struggling for power.³⁸

1893 - Hawaii - January 16 - April 1: On January 14, 1893, Queen Liliuokalani, having succeeded her brother, prorogued the legislature and announced that she planned to promulgate a new constitution that would restore some of the royal prerogatives. Members of her cabinet informed prominent American residents of impending trouble, and they

in turn informed the United States Minister and requested that he ask the commanding officer of the U.S.S. Boston, permanently stationed at Honolulu, to land a force to protect American lives and property. On January 16 a force was sent ashore in compliance with the Minister's request. On February 1 the United States Minister, at the request of the provisional government which had deposed the Queen on January 17, announced that the United States was assuming a protectorate over the Hawaiian Islands. To implement this policy another detachment of marines was landed from the Boston. This action taken by the United States Minister in the name of the United States was disavowed by the Cleveland administration.³⁹

1894 - Nicaragua - July 6 - August 7: The U.S.S. Marblehead and Columbia landed marines at the request of the American Consul at Bluefields in July and August to protect American interests during a civil war between Sacasa and Zelaya.⁴⁰ The initial request by the American Consul reached the commander of the Marblehead at midnight on July 6. The landing force was sent ashore immediately. No attempt was made to obtain the assent of the local authorities, since it was the judgment of the naval commander that it could not be done without prejudice to the interests involved.

1894-96 - Korea - July 24, 1894 - April 3, 1896: As a consequence of the war between China and Japan the commanding officer of the Asiatic squadron was ordered to proceed with his flagship the U.S.S. Baltimore to Chemulpo, the port of Seoul, to observe and report the situation there. Once there, on July 23 he received a telegram from the United

States Minister at Seoul requesting an armed guard be landed from the Baltimore to protect the American Legation in Seoul. A force was duly landed, and reached the Legation on the morning of July 25.⁴¹

1894-95 - China - November 29, 1894 - May 16, 1895: On November 29, 1894, the U.S.S. Baltimore which was then at Nagasaki, was ordered to land a force of marines at Tientsin. This force was to be held there, and upon call of the United States Minister was to protect the American Legation at Peking during the rioting that was predicted upon the approach of the Japanese Army.⁴²

Although placing a force of marines at the call, and therefore command, of an American Minister is unusual, the purpose and employment of the landing force fell within the limits set by regulation.

1895 - Colombia - March 8-9: In response to a report from the United States Consul General at Panama that a revolutionary general had landed in Colombia and was marching on Bocas del Toro with the expressed intention of capturing it, the Secretary of the Navy ordered the U.S.S. Atlanta, on March 5, to proceed to Bocas del Toro. There, the acting United States consular agent requested that a force be landed to protect the consular agency and other American interests, which were considerable. Permission to land a force was secured from the alcalde of Bocas del Toro and a force was sent ashore.⁴³

1896 - Nicaragua - May 2-4: Marines were landed by the U.S.S. Alert at Corinto to protect American interests during revolutionary activity there. The American Consul had been asked by the Nicaraguan commandant

to request this landing force, because he was unable to afford foreigners proper protection with the forces at his disposal.⁴⁴

1898 - Nicaragua - February 7-8: A force of marines was landed from the U.S.S. Alert to protect Americans and their property at San Juan del Sur during civil war disturbances there. During the first days of February, when the two parties were engaged in open hostilities, the American consular agent and the commander of the Alert had agreed that should it become necessary, marines were to be landed according to a prearranged signal to be given by the consular agent. On February 7, responding to the agreed signal, the commander of the Alert landed a protective force.⁴⁵

1898-99 - China - November 5, 1898 - March 15, 1899: Forces of marines from the U.S.S. Baltimore, Boston, and Raleigh were landed to protect the United States Legation at Peking and the Consulate at Tientsin during the contest between the Dowager Empress and her son. The landing forces were requested by the United States Minister to China and the American Consul at Tientsin.⁴⁶

1899 - Nicaragua - February 22 - March 5: As a consequence of an insurrection against the duly constituted government in Nicaragua, the Department of State requested the Navy's aid. The U.S.S. Marietta was ordered to San Juan del Norte. Foreign merchants of the port were being forced to pay custom charges and port dues by the insurrectionary forces. Consuls and consular agents of the United States, Great Britain, Norway and Sweden agreed with the foreign merchants that they should not be forced to pay such charges and requested the protection of landing

forces. A force was duly landed from the Marietta and a British ship.⁴⁷

Though this case is more difficult to justify under existing naval regulations, it is clear that the charges against foreign merchants were exacted by the insurrectionary forces and not by the duly constituted and legal government. Therefore this action may be said to be within the proper exercise of naval authority to protect the lives of merchants resisting an unlawful payment.

1899 - Samoa - March 13 - May 15: In response to a dispute over the royal succession at Apia in the Samoan Islands, the commander of the Pacific Squadron was ordered by the Secretary of the Navy to proceed there with his flagship, the U.S.S. Philadelphia. The islands were, at this time, under the joint administration of Great Britain, the United States and Germany. The United States and Great Britain supported one side in the dispute, while Germany supported the other side. Numerous landings were made by British ships and the Philadelphia and when, on April 1, the Americans and British combined in an offensive operation, they sustained a number of casualties. By way of reprisal, the British and American forces burned a native village.⁴⁸

The stated purpose of the landings was "to quiet the continuous turmoil on this vital mercantile transit point."⁴⁹ The landings were ordered by the naval commander under authority conferred upon a state when acting in the interest of self-preservation to protect "its honor, and its possessions, and the lives and property of its citizens against arbitrary violence, actual or impending, whereby the state or its citizens may suffer irreparable injury."⁵⁰ Inflicting punishment "against anyone within the territories thereof, is illegal" by the same provision

of the naval regulations that made the landings permissible.⁵¹

1901- Colombia (State of Panama) - November 20 - December 4: During a serious revolutionary disturbance, the Governor of Panama communicated his inability to guarantee the safety and protection of American lives and property and the free transit of the Isthmus. In response, on November 20, the commander of the U.S.S. Machias landed at Colon a force which occupied the property of the Panama Railroad Company. On November 22, Secretary of the Navy Long telegraphed the commanding officer of the U.S.S. Iowa at Panama: "Situation contending forces makes the transit of the Isthmus unstable. Land force. Camp in favorable position outside city; prepare to forestall interruption in transit. This necessary to forestall possible action by other powers." On November 24, a force of two hundred and forty-eight men from the Iowa was sent ashore.⁵²

1902 - Colombia - April 16-23: During April landing forces from the U.S.S. Machias were twice sent ashore at Bocas del Toro. The initial force was landed to protect American residents and property during revolutionary activity. The second force was landed at the request of the Nationalist forces for the purpose of enforcing a strict curfew ordinance on local residents. The force remained for one night and the following day the administration of law in Bocas del Toro was turned back over to the Colombian authorities by the commander of the Machias.⁵³

The first landing was a legitimate exercise of the power conferred upon naval commanders by regulation; however, the purpose for which the second landing was carried out does not appear to enjoy the same legitimacy.

1902 - Colombia (State of Panama) - September 17 - November 18:

Revolutionary disturbances continued, and again in September the free transit of the isthmus was actually obstructed by the contending political forces. In order to restore the traffic and maintain it, landing forces were dispatched simultaneously on September 17 at Colon and Panama by the commanders of the U.S.S. Cincinnati and Ranger, respectively. On September 23 a battalion of marines was landed by the U.S.S. Panther at Colon to protect the lives and property of Americans and to assist in maintaining free movement across the isthmus.⁵⁴

Again the protection of American lives and property is a legitimate exercise of power under the right of self-preservation which authorizes by regulation the use of landing forces. The use of landing forces to maintain free transit across the isthmus, it could be argued, is a legitimate protection of the interests of the United States, and therefore authorized by naval regulation. However, the use of landing forces to enforce a provision of a treaty is not provided for by naval regulation.

1903 - Honduras - March 23-31: A force of marines was landed from the U.S.S. Marietta on March 23 at the request of the American Consul to protect the American consulate at Puerto Cortez during revolutionary fighting. The following day a second force of marines was landed from the U.S.S. Olympia to protect the port facilities at Puerto Cortez.⁵⁵

1903 - Dominican Republic - March 30 - April 21: With the outbreak of a revolutionary disorder in the Dominican Republic, the U.S.S. Atlanta

was ordered to Santo Domingo City to protect American lives and property. On April 1 the commander of the Atlanta, having assessed the situation, ordered a detachment of twenty-nine marines ashore. The marines remained in the house of the United States Consul General until April 21, at which time they returned to their ship.⁵⁶

1903 - Turkey - September 7-12: During the course of a Moslem uprising, the American Consul in Beirut was assaulted. The Mediterranean Squadron at Beirut conducted a demonstration to preclude further hostile acts against Americans. In addition, the U.S.S. Brooklyn landed a force of marines at Beirut to protect the American Consulate there.⁵⁷

1904 - Dominican Republic - January 2 - February 11: While a revolution was in progress in the Dominican Republic, the Navy Department, early in 1904, ordered the U.S.S. Detroit to Dominican waters. There she was to be prepared to protect American lives and property where they were determined to be in danger. Under these orders from the Navy Department an armed detachment was landed at Puerto Plata in January. Under similar orders detachments were also landed from the U.S.S. Newark and Columbia at Santa Domingo City in February.⁵⁸

Clearly, each commander believed American lives and property to be in danger and acted accordingly. The landings were initiated by authority of separate orders from the Navy Department to protect American lives and property. Separate orders from the Navy Department enjoy prior legislative approval, just as do independent actions of commanders acting in accordance with regulations issued under Congressional legislation enabling the Navy Department to make rules for the conduct of its affairs.

1904 - Tangier, Morocco - May 30 - June 26: A marine force was landed from the U.S.S. Brooklyn and briefly protected the Consul General. The landing occurred during a naval demonstration effected to procure the release of an American kidnapped by a local chieftain. "We want either Perdicas alive or Raisuli dead."⁵⁹

1904-05 - Korea - January 5, 1904 - November 11, 1905: A large force of marines was landed in January in Korea by the U.S.S. Zafiro. The force proceeded to Seoul, and during the Russo-Japanese War it was used to protect American Legation in Seoul. This force remained in place until November 1905.⁶⁰

1907 - Honduras - March 18 - June 8: During the Honduran-Nicaraguan War in 1907, the Navy Department sent the U.S.S. Marietta to protect American interests along the eastern coast of Central America. On March 18, a force was sent ashore to protect the United States Consulate in Truxillo, Honduras. On the same day a force was landed at Ceiba, and on March 26, another force was landed at Puerto Cortez. On April 5, a force was landed on the coast and marched thirty miles to San Pedro. The purpose of each landing was to protect American interests. On April 10, the forces at Truxillo and Ceiba were reinforced by additional marines and seamen from the U.S.S. Paducah.⁶¹

1910 - Nicaragua - May 18: When on May 18 it became apparent that armed hostilities by revolutionary forces could not be prevented at Bluefields, a force of one hundred men was landed from the U.S.S. Paducah to enforce a decree which had been issued by the commander.

The decree warned that in order to safeguard lives and property of Americans and other noncombatants, there must be no fighting in Bluefields. On May 19, at the request of the Department of State, the Navy Department ordered the commander of the Paducah to maintain his neutrality but to hold opposing forces accountable for any injuries sustained by Americans.⁶²

In 1920 the issuance of an ultimatum to a foreign government by a naval commander without first communicating with the Navy Department was prohibited by regulation.⁶³ Even in this instance, though no specific mention was made of his decree, the commander of the Paducah, at the insistence of the State Department, was ordered by the Navy to maintain his neutrality. It seems likely the State Department was concerned that a decree had been issued, whatever its content. The purpose of the landing itself, however, was to protect American lives and property during a revolutionary disturbance, an action authorized by regulation.

1911 - Honduras - January 26: During a revolution, the President of Honduras requested the "decisive cooperation of the United States as a service to the foreign residents of the port" of Amapala. The U.S.S. Tacoma and Marietta were sent to Honduras to protect American interests. In anticipation of an attack on Puerto Cortez by the insurgents the commanding officer of the Tacoma landed a force of sixty men to protect that town. He notified the Navy Department of his action and stated that in order to prevent fighting within Puerto Cortez, he had established a neutral zone around the town and if necessary he planned to use force to maintain its neutrality. He said: "If the revolutionary

leader appears with superior force I shall require government of Honduras to surrender town or fight outside. Will use force if necessary." Four days later he received a reply authorizing him to use force if necessary to prevent fighting in Puerto Cortez. The President of Honduras and the leader of the revolutionary forces were notified that such authority had been given.⁶⁴

This action by the commander of the Tacoma and the Navy Department would appear more constraining than necessary to protect American interests. An ultimatum was issued; but ultimatums at this time were not specifically prohibited by regulations. However, to require the government of Honduras to surrender a town in order to protect American interests would be the use of more force than necessary. It was not necessary to carry out any of the threatened actions, but the issuance of such ultimatums must certainly have led to their prohibition by regulation in 1920.⁶⁵

1911-12 - China - October 10, 1911 - April 12, 1912: The American Charge d'Affaires in Peking, realizing that American and foreign communities located within the Yangtze River ports were totally unprepared to protect themselves during hostilities that might occur as a result of the revolution, recommended to British authorities and the Department of State that a co-operative plan of defense be adopted. The Navy Department approved the plan calling for the co-operation of American and British authorities, and the Commander-in-Chief of the United States Asiatic Fleet was instructed to confer with his British counterpart and American consular officers throughout the region. Under this authority nine landings were made to protect American interests

spanning a period from October 10, 1911 to April 12, 1912.⁶⁶

This same authority was to extend to numerous future landings. All landings, however, were made in accordance with existing regulations and were confined to protecting lives and property.

1912 - Honduras - February 6-8: At the request of the United States Vice Consul at Puerto Cortez, a small force was landed on February 6 from the U.S.S. Petrel to prevent the seizure of the American-owned railroad by the government of Honduras. This force was landed without instructions from Washington. The government of Honduras protested this action by the commanding officer of the Petrel, and on February 8, he received instructions from the Navy Department to withdraw the force. That same day the commanding officer of the Petrel sent a letter to the Political Governor at Puerto Cortez stating that he had "received instructions from my government not to forcibly resist seizure of the railroad by the authorities of Honduras."⁶⁷

The force was landed at the request of the American Vice Consul for the purpose of protecting American property, a purpose presumably thought to be within the scope of then existing naval regulations. The commander of the Petrel had acted on his own authority in landing the force. The action was not supported by the United States government.

1912 - Cuba - June 5 - August 5: A Negro uprising in Cuba prompted the Navy Department to order the U.S.S. Prairie, with five hundred marines on board, to the United States naval station at Guantanamo to join the Nashville and Paducah. The American Minister at Havana was instructed to inform the Cuban government that in case American lives and property

were endangered, American forces would be landed for their protection. The President of Cuba asked President Taft that no forces be landed in Cuba. Secretary Knox replied that the American government did "not undertake first to consult the Cuban government if a crisis arose requiring a temporary landing somewhere to protect life and property on the broad principle of international practice." On June 5, the crisis was deemed serious enough by the commandant at the naval station at Guantanamo to warrant the dispatch of four marine companies to the eastern part of the island to protect American interests.⁶⁸

This is rather curious behavior for a Secretary of State, especially considering that naval regulations required an officer to consult local authorities and obtain their permission when possible before landing a force in their territory.

1912 - Turkey - November 18 - December 2: When victorious Balkan armies succeeded in driving Turkish armies toward Constantinople, rioting broke out in that city that endangered all Christian lives. On the basis of a decision arrived at by representatives of the diplomatic corps there, a detachment was landed from the U.S.S. Scorpion as part of a larger international force. The force from the Scorpion was used to protect the American Legation.⁶⁹

1913 - China - July-August: On July 30, at the request of the consuls at Chapel, marines were landed to protect American and foreign interests there during continuing revolutionary disorders. This force was removed on August 17.

On July 28, the commanding officer of the U.S.S. Albany and

Rainbow landed forces to protect American citizens and their property at Shanghai during an attack by the southern forces.⁷⁰

1913 - Mexico - September 5-7: A marine force was landed from the U.S.S. Buffalo at Ciaris Estero to protect American citizens during revolutionary disorders. Americans had been urged to leave areas where fighting was occurring; however, many had preferred to remain with their property. When their lives had become endangered, the force that had landed from the Buffalo assisted in escorting them from the country.⁷¹

1914 - Haiti - January 29 - February 9, February 20-21, October 19: On three separate occasions during the year 1914 marines were landed in Haiti. The first landing occurred directly after the President of Haiti abdicated during a revolutionary upheaval at Port au Prince. On that occasion a force of one hundred twenty seamen was landed from the U.S.S. South Carolina and Montana to protect the American Legation and foreign interests. A force of marines and seamen was landed on February 20 at Cape Haitien from the U.S.S. Wheeling to patrol the streets during the absence of local police or armed forces. The final landing occurred on October 19 at Cape Haitien when a force of marines was landed from the U.S.S. Tacoma to protect the foreign settlement there during another change in the government.⁷²

1916 - China - March 26: A force was landed from the U.S.S. Quiros on March 26 at Nanking to suppress a riot on the property of the International Export Company.⁷³

1917 - China - December: During a political crisis at Chungking in December, armed guards were landed from American, British and Japanese gunboats that were in the harbor. Each force was employed to protect its respective consulate.⁷⁴

1918-20: Soviet Russia - June-August: A force of marines was landed at and near Vladivostok in June and July from the U.S.S. Brooklyn and New Orleans to protect the American Consulate and other American interests during the fighting between the Bolshevik troops and the Czech Army. A joint proclamation of emergency government and neutrality was issued by the American, British, French, Japanese and Czech commanders in July. The United States force remained in place until the end of August.⁷⁵

1919 - Honduras - September 8-12: During a period of political unrest in Honduras in the months of August and September, a force was landed on September 8 from the U.S.S. Cleveland to protect the lives and property of both Americans and foreigners. The force landed to co-operate with the force of Honduras in maintaining a neutral zone previously designated by the Military Commander of Puerto Cortez. This force returned without incident to the Cleveland on September 12.⁷⁶

1920 - China - March 14: During a riot in Kiukiang, the commanding officers of the U.S.S. Elcano and Samar ordered a landing force ashore to protect American lives and property. They had consulted the British consul before ordering the landing. The force remained ashore two hours and then returned to the ships.⁷⁷

1922 - Turkey - September-October: Forces were landed at Smyrna by an American naval squadron to protect American lives and property during the advance of the Turkish National Army on that city. Turkish and Greek authorities consented to the landing of this force.⁷⁹

1922 - China - October: On October 4 the imminent military invasion of Foochow provided the American Consul reason enough to request a landing force from the U.S.S. Rizal. This force was provided the next day along with forces from British and Japanese ships. When on October 11 Southern forces captured Foochow, the Rizal provided further landing forces.⁸⁰

1923 - China - February and November: On February 14, a small force of marines was landed from the U.S.S. Asheville at Masu Island to protect Americans there against bandits. This force was withdrawn on February 19. On November 15 the Consulate General at Canton requested that a force be landed at the Baptist Mission at Tungshan to protect missionaries of the Seventh Day Adventists' and Baptists' Missions, who feared for their own safety because of a severe defeat suffered by San Yat-sen in a battle with the forces of Chen Chiung-ming near Sheklung.⁸¹

1924-25 - Honduras - February 28, 1924 - April 20, 1925: On eleven separate occasions forces were landed by request of consular officers to protect the American Legation and Consulates and the American lives and property. The landings occurred as a result of political turmoil throughout the country during a contest over the presidency. The U.S.S. Denver landed forces at La Ceiba on February 28 and 29, and March 8 and 9, 1924. Forces were landed from the U.S.S. Billingsley at Tela

on March 3 and at La Ceiba on March 8, 1924. The U.S.S. Lardner also landed forces at Tegucigalpa on March 18, 1924. On September 10, 1924, a force was landed at La Ceiba from the U.S.S. Rochester.⁸²

1924 - China - September: On September 9 a force of two hundred sixty Americans was landed at Shanghai as part of a larger foreign contingent to protect foreign interests in that city.⁸³

1925 - China - January 15 - August 29: On January 15 a force of United States sailors was landed at Shanghai to protect foreign interests. The last remaining parts of this force were withdrawn on August 20. On June 7 at the request of the British Consul General and the American Consul, a force was landed from the U.S.S. Ford at Nanking to protect the International Export Company. The U.S.S. Stewart landed a force at Kiukiang on June 17 to protect American interests there.⁸⁴

1926 - China - November 5-8: On November 5 British, American and Japanese naval units landed forces at Hankow to protect foreign interests there. These forces were withdrawn on November 8.⁸⁵

1927 - China: In the year 1927 eight separate large scale landings were carried out in China by American naval vessels. The largest landing occurred on March 21 when the Commander-in-Chief of the Asiatic Fleet landed a force of fifteen hundred marines in Shanghai at the request of the American Consul General in that city. The United States military and naval forces in China as of August 1927 totaled forty-four naval vessels in China waters and five thousand six hundred and seventy men on shore.⁸⁶

1932 - China - February 5 - July 1: The U.S.S. Chaumont landed a force of fifty-seven officers and one thousand sixty-five men at Shanghai on February 5 to protect American lives and property in that area. The force remained there until July 1.⁸⁷

1958 - Lebanon - July 15: On July 15 President Eisenhower landed a force of five thousand marines at Beirut to protect American lives and to assist Lebanon in preserving its political independence.⁸⁸ The landing was requested by the government of Lebanon under a statement of policy referred to as the "Eisenhower Doctrine" which was contained in a 1957 joint resolution of Congress authorizing the President to use United States armed forces to assist any Middle Eastern nation which had requested United States aid in resisting Communist aggression. This action, which also undertakes to protect American lives, enjoys prior legislative approval by virtue of Congress' having authorized the Secretary of the Navy to formulate rules and regulations for the conduct of the Department of the Navy. The 1948 edition of Navy regulations provides that, under the right of self-preservation, forces may be landed in foreign territories to protect American lives.⁸⁹

(4) Landings to Protect American Citizens and Their Property Before
1865⁹⁰

1833 - Argentina: A force was landed from the U.S.S. Lexington at the request of American residents of Buenos Aires to protect American lives and property during an insurrection.

1835 - Peru: A series of landings occurred at Callao during a revolt to protect American lives and property.

1852-1853 - Argentina: Marines were landed periodically during a revolt in Buenos Aires to protect American residents.

1853 - Nicaragua: During political disturbances at Punta Arenas, American forces were landed to protect American lives and interests.

1854 - China: A combined force of American and British sailors landed at Shanghai to protect their citizens during a battle between Chinese Imperial and revolutionary troops.

1855 - China: Marines were landed from the U.S.S. Powhatan at Shanghai to protect American interests there.

1855 - Uruguay: A force from the U.S.S. Germantown was landed at Montevideo to protect Americans lives and property.

1856 - Panama (Republic of New Granada): Marines were landed from the

U.S.S. Independence and St. Marys at Panama to protect American interests, including the Isthmian railroad, during an insurrection.

1856 - China: A force of 250 men was landed from the U.S.S. Portsmouth and Levant to protect American interests at Canton during hostilities between the British and the Chinese.

1858 - Uruguay: When, during a civil war, the Uruguayan government suggested United States intervention, a force from the U.S.S. St. Lawrence and Falmouth was landed to protect the American Consulate.

1859 - China: The U.S.S. Mississippi landed a force in Shanghai during a political disorder to protect American interests.

1860 - Kissembo, Africa: Marines landed from the U.S.S. Marion to protect Americans and their factories from attack during warfare between natives and Portuguese.

1860 - Colombia: The U.S.S. St. Marys landed marines and sailors to protect railroad traffic and American interests during civil war.

(5) Border Crossings and Landings in Pursuit of Lawbreakers

1814-1825 - Caribbean: This period witnessed repeated engagements between American ships and pirates, both offshore and ashore at Cuba, Puerto Rico, Santa Domingo and Yucatan.⁹¹ On March 3, 1819, Congress passed an act authorizing the President to take necessary steps to protect American lives and shipping from pirates.⁹²

1816 - Spanish Florida: American gunboats destroyed Nichols Fort, after they were fired upon by individuals who had raided United States territory and were then being harbored by the Fort.⁹³

1817 - Amelia Island (Spanish Territory off Florida): President Monroe ordered United States forces to seize the island and expell a group of smugglers, adventurers and freebooters.⁹⁴ President Monroe alleged that he acted under authorization given by Congress in 1811.⁹⁵

1820-1823 - Africa: Pursuant to the 1819 Act of Congress⁹⁶ United States Naval units raided slave traffic.⁹⁷

1822 - Cuba: United States naval forces pursued and engaged pirate forces on land.⁹⁸ No clear authorization by the Congress to pursue the pirates on foreign soil had been issued the Executive, and in 1824 he described the Cuban problem: "Whether those robbers should be pursued on the land, the local authorities be made responsible for these atrocities, or any other measure be resorted to suppress them, is submitted to the consideration of Congress."⁹⁹ Congress took no action.

1823 - Cuba: United States naval forces pursued and engaged pirates on land.¹⁰⁰ On December 20, 1822, Congress has appropriated \$160,000 for the suppression of piracy.¹⁰¹

1824 - Cuba: United States naval forces pursued and engaged pirate forces on land.¹⁰²

1825 - Cuba: United States naval forces pursued and engaged pirate forces on land.¹⁰³

1827 - Greece: United States naval forces landed on three Greek islands to hunt and punish Greek pirates.¹⁰⁴

1870 - Mexico: The ship "Forward" was seized by pirates. The U.S.S. Mohican pursued her up the Tecapan River and discovered her run aground. The crew of the Mohican fought a battle with the pirates, by this time ashore, and when they couldn't dislodge the Forward they destroyed her.¹⁰⁵

1891 - Bering Sea: An American squadron operated in cooperation with British naval vessels to regulate seal poaching. Four schooners were seized.¹⁰⁶

1918-1919 - Mexico: United States troops pursued bandits into Mexico three times in 1918 and six times in 1919.¹⁰⁷

(6) Reprisals

1824 - Puerto Rico: Commodore David Porter commanded a landing party of 200 men that attacked and forced an apology from a group of pirates that had insulted and imprisoned an officer of his command.¹⁰⁸ Porter was courtmartialed for his actions. He was convicted and resigned.

1832 - Sumatra: A force of 250 men was landed to punish a group of natives who had ravaged and murdered crew members of American ships.¹⁰⁹

1838-1839 - Sumatra: American forces were landed to punish natives of two towns who had attacked American ships.¹¹⁰

1840 - Fiji Islands: An American force was landed to punish natives for attacking American exploring and surveying parties.¹¹¹

1841 - Drummond Island, Kingsmill Group: American forces were landed to avenge the murder of a seaman by natives. They burned two towns.¹¹²

1841 - Samoa: The U.S.S. Peacock landed a force which burned a number of towns to avenge the murder of whitemen by natives.¹¹³

1843 - Africa: Four U.S. vessels, the U.S.S. Decatur, Macedonia, Porpoise and Saratoga landed several forces along the coast of West Africa to burn villages in order to discourage piracy and the slave trade along the Ivory Coast, and to punish attacks made by the natives on American seamen and shipping.¹¹⁴

1851 - Johanna Island: The U.S.S. Dale shelled the island and landed a force to punish the native king for imprisoning the captain of the American whaler Maria.¹¹⁵

1854 - Greytown, Nicaragua: During a riot the American Minister to Nicaragua was assaulted. The U.S.S. Cyane was dispatched with orders to obtain reparation. When its demand went unanswered it bombarded the town of Puntas Arenas and sent a landing party ashore to burn it.¹¹⁶

1855 - Fiji Islands: The U.S.S. John Adams landed marines in retaliation for injuries suffered by American seamen on the islands. The force fought skirmishes and burned some villages.¹¹⁷

1858 - Fiji Islands: A force was landed from the U.S.S. Vandalia to punish natives for the murder of two American traders.¹¹⁸

1863 - Japan: When two armed Japanese vessels fired upon an American merchant vessel anchored near the entrance of the straits at Shimonoseki, the U.S.S. Wyoming was sent to test the passage. She was fired upon by shore batteries. The Wyoming then proceeded to sink the two vessels that had initially fired upon the merchant ship.¹¹⁹

1864 - Japan: Between September 5 and 8 seventeen foreign ships, including one American vessel, participated in a punitive expedition against the Daimyo at Shimonoseki.¹²⁰

1866 - China: The American Consul at New Chwang, Francis P. Knight,

was molested and assaulted by forces under one of the many war lords who roamed the territory generally harassing foreigners during this period. Rear Admiral Bell, commanding the Asiatic Squadron, ordered Commander Robert Townsend, aboard the U.S.S. Washusett, to New Chwang to insure that the leader and the men involved in the assault were properly punished. Commander Townsend verified that the men who participated in the incident were being brought to justice by the Chinese authorities; however, when it appeared that the leader was not going to be arrested, Commander Townsend sent a sizable force ashore to arrest this man and insure that he was eventually convicted.¹²¹

1867 - Island of Formosa: Approximately 180 officers and men were landed under the command of Admiral Bell to punish the natives of Formosa, who allegedly had murdered the crew of the American barque Rover when it was wrecked on the southeastern part of the island.¹²²

1871 - Korea: A force of American marines and sailors was landed by Admiral John Rogers in retaliation for attacks upon a naval survey party. Brief but severe fighting ensued, resulting finally in the capture of four Korean forts.¹²³

(7) Minor Demonstrations or Threats of Force Without Combat

1815 - Tripoli: Following Commodore Stephen Decatur's successful attack on Algiers, he turned his attention to Tripoli and Tunis which had committed offenses against American shipping during the War of 1812. He was able to secure indemnities from both by demonstrating with his squadron.¹²⁴

1844 - Mexico: President Tyler deployed United States combat forces to protect Texas against Mexico.¹²⁵

1849 - Smyrna - The U.S.S. St. Louis, guns loaded, gained the release of an American seized by Australian officials without resort to force.¹²⁶

1851 - Turkey: The U.S. Mediterranean Squadron conducted a demonstration along the Turkish (Levant) coast in response to a massacre of foreigners which included some Americans at Jaffa.¹²⁷

1858-1859 - Turkey: The Secretary of State requested the Navy demonstrate along the Levant in response to Turkish indifference to treatment of Americans at Jaffa.¹²⁸

1888 - Haiti: The U.S.S. Galena and Yantic performed a demonstration in response to the seizure of an American merchant ship, which allegedly had broken a blockade established by the Haitian government. Under threat of forcible recapture, the Haitian government surrendered the ship.¹²⁹

1894 - Brazil: During a naval revolt and civil war, Admiral Benham employed the South Atlantic Squadron to maintain freedom of foreign commerce.¹³⁰

1914 - Dominican Republic: To prevent the bombardment of Puerto Plata by the government during revolutionary activity, Captain Russell of the U.S.S. South Carolina threatened to destroy the Dominican gunboats Independencia and Jacagua. When the government began to shell the city, the U.S.S. Machias quickly silenced the government guns by her own fire.¹³¹

1921 - Panama-Costa Rica: American naval squadrons demonstrated on both sides of the Isthmus to prevent war between the two countries over a boundary dispute.¹³²

1933 - Cuba: During a revolution against President Gerardo Machado, American naval forces demonstrated offshore.¹³³

1961 - Dominican Waters: When Dominican dictator Rafael Trujillo was assassinated, his two brothers, Generals Hector and Jose Trujillo, returned to the island. The United States ordered navy ships to take up positions three miles offshore and navy jet planes to patrol the shoreline, when it appeared the brothers were attempting to reassert dictatorial domination of the political and economic life of the country. The brothers and other members of the family soon thereafter departed for Miami.¹³⁴

1962 - Cuba and Soviet Union: President Kennedy declared a limited blockade of the island of Cuba and threatened use of greater force against both Cuba and the Soviet Union.¹³⁵

(8) Protracted Occupation of States in Caribbean Area

1903-1914 - Panama: United States Marines were stationed in Panama during this period to protect American interests during the construction of the Canal. The following orders initiating this occupation were issued by Acting Secretary of the Navy Darling:

... maintain free and uninterrupted transit. If interruption threatened by armed force, occupy the line of railroad. Prevent landing of any armed force with hostile intent, either government or insurgent, either at Colon, Porto Bello, or other port. 136

1906-1909 - Cuba: A large force of Marines was landed to protect American interests during a revolution. They were followed by Army units which occupied the country until 1909 under a provisional governor appointed by the United States.¹³⁷

1912-1925 - Nicaragua: Forces were landed to protect American interests during revolutionary disorder. A detachment of marines remained until 1925 to guard the American Legation.¹³⁸

1915-1934 - Haiti: American forces at the request of diplomatic representatives of France, Great Britain and the United States were landed at Port au Prince to protect American and foreign interests during a state of anarchy in Haiti. The United States placed Haiti under its military and financial administration. This action was legitimized by treaty by Haiti in 1915 and by the United States Senate in 1916.¹³⁹

1916-1924 - Dominican Republic: As a result of internal disorder, the United States landed forces ostensibly to protect the American Legation, the customs Receivership - General, and foreigners in the Haitian Legation. U.S. forces were, soon, however, engaged in restoring order. A military occupation of the Dominican Republic was proclaimed, a condition which continued until 1924.¹⁴⁰

1917-1922 - Cuba: American troops were landed to protect American interests during revolutionary disorders, and remained until 1922 because of a continued unsettled political condition.¹⁴¹

1926-1933 - Nicaragua: In response to revolutionary activity, the United States landed a force of marines to protect the lives and property of Americans and other foreigners. Several neutral zones were established during an occupation undertaken by President Coolidge that was to continue till 1933.¹⁴²

(9) Actions Undertaken by President Franklin D. Roosevelt, 1940-1941,
Grouped Under "Undeclared War."¹⁴³

1940 - Bases in British Possessions: On September 3, President Roosevelt informed Congress that he had agreed to deliver a flotilla of destroyers to Great Britain in exchange for a series of naval and air bases in the Western Hemisphere, such as Newfoundland, the Bermudas, Bahamas, Trinidad, and British Guiana. American troops and ships occupied these points in the following months.

1941 - Greenland: In April, after the German invasion of Denmark the U.S. Army occupied Greenland in conformity with executive agreement reached with the Danish minister, although Denmark repudiated the agreement.

1941 - Iceland: By Presidential order, U.S. troops occupied Iceland on July 7, the same day Congress was notified. The President did not consult Congress in advance, and, in fact the action clearly violated an express restriction that Congress had enacted a year before. Both the Reserves Act of 1940 and the Selective Service Act of 1940 provided that United States troops could not be used outside the Western Hemisphere. Iceland is invariably placed within the section on Europe in every United States atlas and is some 3,300 miles away from the United States, and is only 520 miles away from Great Britain.

1941 - Netherlands (Dutch Guiana): In November the President ordered American troops to occupy Dutch Guiana by agreement with the Netherlands

Government-in-exile.

1941 - Germany: In spring President Roosevelt had ordered the Navy to patrol shipping lanes to Europe. That summer U.S. Navy vessels convoyed supplies to the British. Following the Greer incident President Roosevelt issued the "shoot on sight" order to the Navy.

(10) Invasion of Foreign or Disputed Territory, No Statute, No Combat

1806 - Mexico (Spanish Territory): Captain Zebulon M. Pike, on orders from General James Wilkinson, invaded Spanish territory with a platoon of troops. This was ordered without President Jefferson's knowledge.¹⁴⁴

1810 - West Florida (Spanish Territory): An act of Congress dated February 24, 1804 claimed the territory of West Florida; however, when Jefferson requested Congressional authority to seize this territory, it was denied.¹⁴⁵ When, in October 1810, a group comprised by and large of American citizens overthrew local Spanish authorities, President Madison ordered Governor Claiborne of Louisiana to take possession of the disputed territory as far as the Pearl River.¹⁴⁶ Force was not necessary.

1831-1832 - Falkland Islands: American forces from the U.S.S. Lexington landed under the command of Captain Duncan to investigate the seizure of three American vessels and their crews. Captain Duncan had acted on his own responsibility.¹⁴⁷

1836 - Mexico: General Gaines acting under orders to cross an "imaginary boundary line" if an Indian outbreak was imminent, occupied disputed territory (Nacogdoches, Texas), during the Texan war for independence.¹⁴⁸

1842 - Mexico: Believing that war had broken out between the United States and Mexico, Commander T.A.C. Jones landed his squadron at Monterey, California to occupy that position.¹⁴⁹

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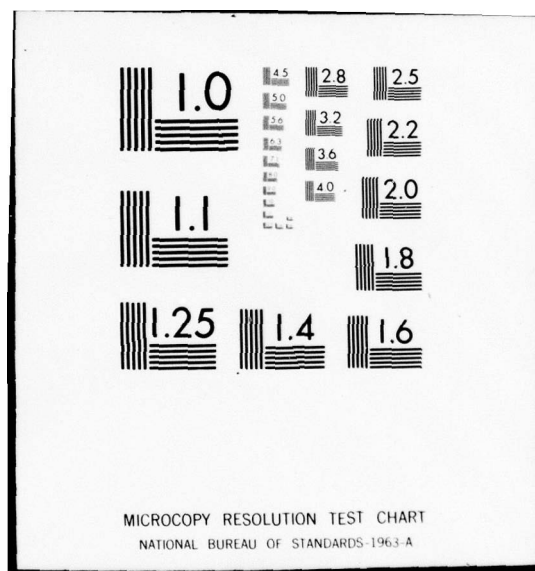
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1853-1854 - Japan and the Ryukyu and Bonin Islands: Commodore Matthew C. Perry to secure facilities for commerce landed a force of marines from the four men-of-war under his command at Edo Bay in July, 1853, at the Bonin Islands, where he took possession, and at the Ryukyus, where he established a coaling station. In March 1854 he returned to Edo Bay and landing with a sizable force he signed a commercial treaty with Japan.¹⁵⁰

1857 - Nicaragua: Commodore Paulding landed a force of marines to arrest William Walker. He returned Walker to Washington under arrest. There President Buchanan repudiated Paulding's action as a breach of sovereignty.¹⁵¹

1859 - Mexico: A force of two hundred crossed the Rio Grande into Mexico in pursuit of the Mexican bandit Cortina.¹⁵²

1866 - Mexico: General Sedgwick with a force of 100 men seized Matamoros. After three days he was ordered to withdraw. His act was repudiated by the President and he was arrested.¹⁵³

1873-1882 - Mexico: United States forces repeatedly crossed into Mexican territory in pursuit of cattle thieves. An agreement in 1882 between the two states recognized this type of invasion as legal.¹⁵⁴

1904 - Panama: American troops, at the request of local political groups, were employed to supervise elections outside the Canal Zone.¹⁵⁵

1925 - Panama: At the request of the Panamanian Minister of Foreign Affairs, about 600 American troops were sent from the Canal Zone to Panama City to police a strike and riots.¹⁵⁶

(11) Invasion of Foreign or Disputed Territory, No Statute, Combat

1813-1814 - Marquesas Islands: Captain David Porter took possession of the Island of Nukakiva (on behalf of the United States) to provide a refilling station for his ship. He found it necessary on several occasions to use force to defend his station from attacks from hostile tribes.¹⁵⁷ No evidence exists that Captain Porter was acting under any authority other than his own.

1816-1818 - Spanish Florida (First Seminole War): Generals Jackson and Gaines invaded Spanish Florida to attack the Seminole Indians whose area was believed to harbor escaped slaves and border ruffians. During the invasion, Spanish posts were also attacked and occupied.¹⁵⁸

1899-1901 - Philippine Islands: The United States committed 126,000 troops against the Philippine Insurrection without a declaration of war. Though a continuation of the Spanish-American War of 1898, this action commenced after a Treaty of Peace with Spain.¹⁵⁹

1900-1901 - The Boxer Uprising: United States troops were employed in numerous instances to participate with international relief forces in combating Chinese "Boxers".¹⁶⁰

1950-1953 - Korea: President Truman ordered United States Forces to repel invasion of North Korea into South Korea, then ordered invasion of North Korea by U.S. forces.¹⁶¹

1964-1973 - War in Vietnam: President Johnson, having obtained the Tonkin Gulf Resolution from Congress, under other than open and frank circumstances, proceeded to wage protracted war. Later President Johnson claimed the Resolution was unnecessary, since his power under the Commander-in-Chief clause of the Constitution and His inherent power as President was sufficient to wage war. President Nixon, after the repeal of the Tonkin Gulf Resolution by Congress, pointed to the same powers as justification to continue to wage war.¹⁶²

1965 - Dominican Republic: A revolt broke out in the Dominican Republic on April 24, 1965, and on April 28 President Johnson announced that Dominican military authorities had requested assistance from the United States in protecting the lives of the United States citizens living in that country. The first United States military contingent to the Dominican Republic consisted of 400 men. On May 2, the President announced that he was sending 200 more men immediately and that an additional 4,500 would follow. He cited increasing communist control of the revolutionaries as critical, and at one point United States troop strength in the Dominican Republic rose to 21,500.¹⁶³

1970 - Cambodia: U.S. troops invaded Cambodia to deny to the Viet Cong and North Vietnamese sanctuaries from which they could attack United States and South Vietnamese forces in South Vietnam.¹⁶⁴

Notes

- ¹U.S., Statutes at Large, Vol. 2, p. 755, June 18, 1812.
- ²U.S., Statutes at Large, Vol. 9, p. 9, May 13, 1846.
- ³U.S., Statutes at Large, Vol. 30, p. 346, April 25, 1898.
- ⁴U.S., Statutes at Large, Vol. 40, p. 1, April 6, 1917 (Germany); Vol. 40, p. 429, December 7, 1917 (Austria-Hungary).
- ⁵U.S., Statutes at Large, Vol. 55, p. 795, December 8, 1941 (Japan); Vol. 55, p. 797, December 11, 1941 (Italy); Vol. 56, p. 307, June 5, 1942 (Bulgaria); Vol. 56, p. 307, June 5, 1942 (Hungary); Vol. 56, p. 307, June 5, 1942 (Rumania).
- ⁶Francis D. Wormuth, "The Nixon Theory of the War Power: A Critique," California Law Review, 60 (May, 1972), 689 - 690.
- ⁷U.S., Statutes at Large, Vol. 1, p. 572, July 9, 1798.
- ⁸Robert William Russel, "The United States Congress and the Power to Use Military Force Abroad." (unpublished Ph. D. dissertation, Fletcher School of Law and Diplomacy, 1967) pp. 102 - 109.
- ⁹U.S., Statutes at Large, Vol. 2, p. 129, February 6, 1802.
- ¹⁰Wormuth, "Nixon Theory of the War Power," pp. 688 - 689.
- ¹¹U.S., Statutes at Large, Vol. 2, p. 207, February 28, 1803.
- ¹²U.S., Statutes at Large, Vol. 3, pp. 471 - 472, January 15, 1811.
- ¹³James D. Richardson, ed., A Compilation of the Messages and Papers of the Presidents, 1798-1908, Vol. 1 (Washington, D.C.: Bureau of National Literature and Art, 1909), p. 492.
- ¹⁴U.S., Statutes at Large, Vol. 3, p. 472, February 12, 1813.

¹⁵James Grafton Rogers, World Policing and the Constitution (Boston: World Peace Foundation, 1945), p. 94.

¹⁶U.S., Statutes at Large, Vol. 3, p. 230, March 3, 1815 (See also note 9).

¹⁷Rogers, World Policing and the Constitution, p. 103.

¹⁸Congressional Record, Senate, 63d Cong., 1st sess., Vol. 51, pt. 7, April 21, 1914, p. 6964.

¹⁹U.S. Congress, Senate, S. Exec. Doc. 143, 58th Cong., 3d sess., pp. 25 - 26.

²⁰U.S. Congress, House, Report of the Secretary of the Navy of 1868, H. Exec. Doc. 1, 40th Cong., 3d sess., 1868.

²¹Ibid., p. 14.

²²Ibid., p. 13.

²³U.S., Congress, House, Report of the Secretary of the Navy of 1873, H. Exec. Doc. 1, 43rd Cong., 1st sess., 1873, p. 8.

²⁴U.S., Congress, House, Report of Rear Admiral Charles Steedman to the Hon. George M. Robeson, May 13, 1873, H. Exec. Doc. 1, 43d Cong., 1st sess., 1873, pp. 260 - 262.

²⁵U.S., Congress, House, Report of Rear Admiral John J. Almy to the Hon. George M. Robeson, Oct. 6, 1873, H. Exec. Doc. 1, 43d Cong., 1st sess., 1873, p. 263.

²⁶Regulations for the Government of the United States Navy: 1870 (Washington, D.C.: Government Printing Office, 1870).

²⁷U.S., Congress, House, Report of Commander George E. Belknap to the Hon. George M. Robeson, February 21, 1874, H. Exec. Doc. 1, 43d Cong., 2d sess., 1874, pp. 181 - 185.

²⁸U.S., Congress, House, Report of the Secretary of the Navy of 1874, H. Exec. Doc. 1, 43d Cong., 2d sess., 1874, p. 8.

²⁹J. Reuben Clark, Right to Protect Citizens in Foreign Countries by Landing Forces (Washington, D.C.: Government Printing Office, 1934), pp. 67 - 68.

³⁰U.S., Congress, House, Report of the Secretary of the Navy of 1883, H. Exec. Doc. 1, 47th Cong., 2d sess., 1883, p. 14.

³¹U.S., Congress, Senate, S. Doc. 143, 58th Cong., 2d sess., 1904, pp. 53 - 58.

³²Ibid., pp. 59 - 69, 103 - 149.

³³U.S., Congress, Report of the Secretary of the Navy of 1889, H. Exec. Doc. 1, 50th Cong., 2d sess., 1890, pp. 20 - 21.

³⁴Harry Allanson Ellsworth, One Hundred Eighty Landings of United States Marines, 1800-1934 (Washington, D.C.: Mimeographed book, 1934), p. 146.

³⁵Ibid., pp. 92- 93.

³⁶Ibid., p. 13.

³⁷U.S., Congress, House, Report of the Secretary of the Navy of 1891, H. Exec. Doc. 1, 52d Cong., 1st sess., 1891, p. 151.

³⁸Ibid., pp. 158 - 159.

³⁹U.S., Congress, House, H. Exec. Doc. 1, 53d Cong., 2d sess., 1893, pp. 580 - 83.

⁴⁰Ellsworth, 180 Landings, p. 122.

⁴¹U.S., Congress, Report of the Secretary of the Navy of 1894, H. Exec. Doc. 1, 53d Cong., 3d sess., 1894, p. 24.

⁴²U.S., Congress, House, H. Exec. Doc. 3, 54th Cong., 1st sess., 1895, pp. 521, 526.

⁴³U.S., Congress, Senate, S. Doc. 143, 58th Cong. 3d sess., 1905, pp. 160 - 164.

⁴⁴Ellsworth, 180 Landings, p. 123.

⁴⁵Ibid.

⁴⁶Ibid., pp. 32 - 33.

⁴⁷Papers Relating to the Foreign Relations, 1899, pp. 550 - 559.

⁴⁸U.S., Congress, House, H. Exec. Doc. 3, 56th Cong., 1st sess., 1900, pp. 935 - 42.

⁴⁹Rogers, World Policing and the Constitution, p. 112.

⁵⁰Regulations for the Government of the Navy of the United States:
¹⁸⁹⁶ (Washington, D.C.: Government Printing Office, 1896).

⁵¹Ibid.

⁵²U.S., Congress, Senate, S. Doc. 143, 58th Cong. 2d sess., 1904, pp. 69 - 73, 176 - 225.

⁵³Ibid., pp. 254 - 258.

⁵⁴Ibid., pp. 285 - 87.

⁵⁵Ellsworth, 180 Landings, p. 95.

⁵⁶Papers Relating to the Foreign Relations, 1903, pp. 390 - 91.

⁵⁷Rogers, World Policing and the Constitution, p. 113.

⁵⁸Papers Relating to the Foreign Relations, 1904, p. 261;
U.S., Congress, House, H. Exec. Doc. 3, 58th Cong., 3d sess., 1905, pp. 535 - 36.

- ⁵⁹Rogers, World Policing and the Constitution, p. 114.
- ⁶⁰Ellsworth, 180 Landings, p. 60.
- ⁶¹Clark, Right to Protect Citizens in Foreign Countries by Landing Forces, p. 74; Offutt, The Protection of Citizens Abroad by the Armed Forces of the United States, p. 104.
- ⁶²Papers Relating to the Foreign Relations, 1910, pp. 738 - 50.
- ⁶³United States Naval Regulations: 1920 (Washington, D.C.: Government Printing Office, 1927).
- ⁶⁴Papers Relating to the Foreign Relations, 1911, pp. 291 - 98.
- ⁶⁵United States Navy Regulations: 1920 (Washington, D.C.: Government Printing Office, 1927).
- ⁶⁶Clark, Right to Protect Citizens in Foreign Countries by Landing Forces, pp. 82 - 86; Papers Relating to the Foreign Relations, pp. 151 - 65.
- ⁶⁷Clark, Right to Protect Citizens in Foreign Countries by Landing Forces, pp. 113 - 14.
- ⁶⁸Papers Relating to the Foreign Relations, 1912, pp. 244 - 58.
- ⁶⁹Ibid., p. 1353.
- ⁷⁰Clark, Right to Protect Citizens in Foreign Countries by Landing Forces, pp. 86 - 87.
- ⁷¹Ellsworth, 180 Landings, pp. 115 - 16.
- ⁷²Papers Relating to the Foreign Relations, 1914, pp. 334 - 54.
- ⁷³Clark, Right to Protect Citizens in Foreign Countries by Landing Forces, p. 88.

⁷⁴Ibid.

⁷⁵Ellsworth, 180 Landings, p. 142.

⁷⁶Clark, Right to Protect Citizens in Foreign Countries by Landing Forces, p. 114.

⁷⁷Ibid., p. 88.

⁷⁸Ibid., p. 111.

⁷⁹Ibid., p. 129.

⁸⁰Ibid., p. 89.

⁸¹Ibid., p. 90.

⁸²Ibid., pp. 115 - 17.

⁸³Ibid., p. 90.

⁸⁴Ibid., pp. 90 - 91.

⁸⁵Ibid., p. 91.

⁸⁶Ibid., pp. 91 - 94.

⁸⁷Ibid., p. 97.

⁸⁸New York Times, July 14-18, 1958.

⁸⁹United States Navy Regulations, 1948 (Washington, D.C.: Government Printing Office, 1948).

⁹⁰Rogers, World Policing and the Constitution, p. 93.

⁹¹Ibid., pp. 94 - 95.

- ⁹²U.S., Statutes at Large, Vol. 3, p. 510, March 3, 1819.
- ⁹³Robert William Russel, "The United States Congress and the Power to Use Military Force Abroad." (unpublished Ph. D. dissertation, Fletcher School of Law and Diplomacy, 1967), p. 488.
- ⁹⁴Rogers, World Policing and the Constitution, pp. 95 - 96.
- ⁹⁵U.S., Statutes at Large, Vol. 3, pp. 471 - 72, January 15, 1811.
- ⁹⁶U.S., Statutes at Large, Vol. 3, p. 510, March 3, 1819.
- ⁹⁷Rogers, World Policing and the Constitution, p. 96.
- ⁹⁸Ibid.
- ⁹⁹Richardson, Compilation of Messages and Papers of the Presidents, p. 258.
- ¹⁰⁰Rogers, World Policing and the Constitution, p. 96.
- ¹⁰¹U.S., Statutes at Large, Vol. 3, p. 720, December 20, 1822.
- ¹⁰²Rogers, World Policing and the Constitution, p. 97.
- ¹⁰³Ibid.
- ¹⁰⁴Ibid.
- ¹⁰⁵U.S., Congress, House, H. Exec. Doc. 1, 41st Cong., 3d sess., 1871, pp. 145 - 149.
- ¹⁰⁶Rogers, World Policing and the Constitution, p. 109.
- ¹⁰⁷Ibid., p. 120.
- ¹⁰⁸Offutt, The Protection of Citizens Abroad by the Armed Forces of the United States, pp. 14 - 15.

- ¹⁰⁹Ibid., pp. 22 - 24.
- ¹¹⁰U.S., Congress, Senate, Report of the Secretary of the Navy of 1839, S. Doc. 1, 26th Cong., 1st sess., 1839, p. 532.
- ¹¹¹Offutt, Protection of Citizens Abroad by the Armed Forces of the United States, p. 25.
- ¹¹²Ibid., p. 26.
- ¹¹³Rogers, World Policing and the Constitution, p. 99.
- ¹¹⁴Ibid.
- ¹¹⁵Ibid., p. 100.
- ¹¹⁶U.S. Congress, Senate, Report of the Secretary of the Navy of 1854, S. Doc. 1, 33d Cong., 2d sess., 1854, p. 385.
- ¹¹⁷U.S., Congress, House, Report of Commander E.F. Foutwell to Commodore William Mervine, Dec. 22, 1855, H. Exec. Doc. 115, 34th Cong., 1st sess., 1855.
- ¹¹⁸U.S., Congress, Senate, Report of the Secretary of the Navy of 1859, S. Exec. Doc. 2, 36th Cong., 1st sess., 1859, p. 1145.
- ¹¹⁹Papers Relating to the Foreign Relations, 1863, pp. 1048 - 1051.
- ¹²⁰Papers Relating to the Foreign Relations, 1864, p. 553.
- ¹²¹Ellsworth, 180 Landings, pp. 28 - 29.
- ¹²²U.S., Congress, House, Report of the Secretary of the Navy of 1867, H. Exec. Doc. 1, 40th Cong., 2d sess., 1867.
- ¹²³U.S., Congress, House, Report of the Secretary of the Navy of 1871, H. Exec. Doc. 1, 42d Cong., 2d sess., 1871, pp. 277 - 85.
- ¹²⁴Rogers, World Policing and the Constitution, p. 95.

¹²⁵Ibid., p. 100.

¹²⁶Ibid.

¹²⁷Ibid.

¹²⁸Ibid., p. 103.

¹²⁹Clark, Right to Protect Citizens in Foreign Countries by Landing Forces, p. 69.

¹³⁰Papers Relating to the Foreign Relations, 1894, pp. 115 - 121.

¹³¹Papers Relating to the Foreign Relations, 1914, pp. 222 - 245.

¹³²Rogers, World Policing and the Constitution, p. 121.

¹³³Ibid., p. 122.

¹³⁴U.S., Congress, Congressional Record, Senate, 92d Cong., 1st sess., Vol. 117, No. 58 (April 26, 1971), p. 5645.

¹³⁵See text, pp. 196-98.

¹³⁶U.S., Congress, Senate, Diplomatic History of the Panama Canal, S. Doc. 474, 63d Cong., 2d sess., 1914, p. 362.

¹³⁷Papers Relating to the Foreign Relations, 1906, pp. 454 - 490.

¹³⁸Clark, Right to Protect Citizens in Foreign Countries by Landing Forces, pp. 119 - 122.

¹³⁹Ibid., pp. 112 - 113; U.S., Statutes at Large, Vol. 39, pt. 2, pp. 1654 - 1660.

¹⁴⁰Ibid., pp. 109 - 110.

¹⁴¹Papers Relating to the Foreign Relations, 1917, pp. 350 - 429.

¹⁴²U.S., Congress, Senate, Committee on Foreign Relations, Use of the United States Navy in Nicaragua, 70th Cong., 1st sess., 1928, pp. 42 - 43.

¹⁴³See Chapter II.

¹⁴⁴Francis D. Prucha, The Sword of the Republic: The United States Army on the Frontier, 1783-1846 (New York: MacMillan, 1969), pp. 91 - 92.

¹⁴⁵Papers Relating to the Foreign Relations of the United States, Vol. 1, pp. 63 - 65.

¹⁴⁶Rogers, World Policing and the Constitution, p. 93.

¹⁴⁷Russel, "The United States Congress and the Power to Use Military Forces Abroad," pp. 174 - 75.

¹⁴⁸Rogers, World Policing and the Constitution, p. 98.

¹⁴⁹Ibid., p. 99.

¹⁵⁰Ibid., p. 101; U.S., Congress, Senate, Correspondence Relative to the Naval Expedition to Japan, 1855, S. Exec. Doc. 34, 33d Cong., 2d sess., 1855.

¹⁵¹Rogers, World Policing and the Constitution, p. 102.

¹⁵²Ibid., pp. 103 - 04.

¹⁵³Ibid., p. 105.

¹⁵⁴Ibid., p. 107.

¹⁵⁵U.S., Congress, House, Report of the Commandant of the U.S. Marine Corps, 1905, H. Exec. Doc. 3, 59th Cong., 1st sess., 1906, p. 1236.

¹⁵⁶Rogers, World Policing and the Constitution, pp. 116 - 17.

¹⁵⁷Clark, Right to Protect Citizens in Foreign Countries by Landing Forces, pp. 128 - 29.

¹⁵⁸Offutt, The Protection of Citizens Abroad by the Armed Forces of the United States, p. 9.

¹⁵⁹Rogers, World Policing and the Constitution, p. 95.

¹⁶⁰Clark, Right to Protect Citizens in Foreign Countries by Landing Forces, pp. 72 - 73.

¹⁶¹See Chapter III

¹⁶²See Chapter IV

¹⁶³See Chapter V

¹⁶⁴See Chapter V

APPENDIX B

DOCUMENTS RELATED TO ROOSEVELT'S UNDECLARED WAR

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Extracts from letter published in the New York Times on August 11, 1940

...It has been suggested that fresh legislative authority is required to permit the executive branch of the government to release these old destroyers for sale to Great Britain. We should like to place on record our own legal opinion that this is not the case...

If it should be the opinion of the appropriate staff officers of both armed services, as it is the opinion of General Pershing, that the requirements of our national defense would be served rather than hurt by the release of some of our over-age destroyers for sale to the British, there should be no legal bar to effectuating their release under existing statutory authority.

It is true that on June 24 a ruling of the Attorney General was announced to the effect that private builders who were constructing new torpedo boats for the account of the Navy could not, even with the consent of the Navy, complete such boats to the order of a belligerent government. The Attorney General indicated that the sending out of the country by a private builder of a vessel of war built to enter the service of a belligerent would be violation of section 3 of Title V of the Espionage Act of June 15, 1917 (c. 30, 40 Stat. 222, U.S.C. Title 18 Sec. 33), and possibly also of section 23 of Title 18 of the United States Code...

Section 23 of Title 18 of the United States Code is obviously not applicable to ships which were neither built nor equipped with a view to their entering the service of a belligerent power. The section reads as follows:

'Whoever, within the territory of jurisdiction of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out or arming of any vessel with intent that such a vessel shall be employed in the service of any foreign prince, or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens or property of any foreign prince or state, or any colony, district, or people with whom the United States are at peace, or whoever issues or delivers a commission within the territory or jurisdiction of the United States for any vessel, to the intent that she may be so employed, shall be fined not more than \$10,000 and imprisoned not more than three years.'

In the *Santissima Trinidad*, 7 Wheat 283, the United States Supreme Court held that the statute did not apply to the commercial sale of an armed vessel to a belligerent when there was no evidence that it was originally outfitted contrary to law. Justice Story stated that 'there is nothing in our laws or in the laws of nations that forbids our citizens from sending armed vessels, as well as munitions of war, to foreign ports for sale.'

Section 3 of Title V of the Espionage Act of 1917 (U.S.C., Title 18, sec. 33) also is, in our opinion, inapplicable to armed vessels,

like our old destroyers, which were not built, armed or equipped as, or converted into, vessels of war with the intent that they should enter the service of a belligerent. That section must be read in conjunction with the section that precedes it, and in the light of the rules of international law which both the Attorney General, Mr. Gregory, and the Congress stated the statute was aimed to fulfill (H.R. Rep. No. 30, 65th Congress, 1st session, p. 9). These rules are clearly stated by D. Lauterpacht in his Fifth Edition (September, 1935) of Oppenheim's International Law, Vol. II, Sec. 334:

'Whereas a neutral is in no wise obligated by his duty of impartiality to prevent his subjects from selling armed vessels to the belligerents, such armed vessels being merely contraband of war, a neutral is bound to employ the means at his disposal to prevent his subjects from building, outfitting, or arming, to the order of the belligerent, vessels intended to be used as men-of-war, and to prevent the departure from his jurisdiction of any vessel which, by order of either belligerent, has been adapted to warlike use.'

Section 2 of Title V of the Espionage Act of 1917 (c. 30, 40 Stat. 221, U.S.C. Title 18, sec. 32) recognizes the right of American and foreign citizens to take armed vessels out of the jurisdiction of the United States for sale to belligerents, provided that assurance is given when clearance is applied for that this sale or delivery will not take place within the jurisdiction of the United States or on the high seas...

Nor does the Neutrality Act of November 4, 1939 (c. 2, U.S.C. Title 22, sec. 245j-1), interpose any legal bar to the release of the destroyers to the British. Under that Act the vessels may lawfully be taken out of the United States to a belligerent port provided title is first transferred from the American owner. Such transfer of title could be made, under the Act, to a foreign neutral individual or corporation...

These destroyers are now built, armed and equipped. It cannot by the furthest stretch of the imagination be said that they were built armed or equipped to the order of any belligerent, or with the intent that they should enter the service of any belligerent. If they are now released to private contractors, there is no insuperable legal barrier which stands in the way of their sale to the British in a manner compatible with the provisions of the Neutrality Act.

There is no reason for us to put a strained or unnecessary interpretation on our own statutes contrary to our own natural interests. There is no reason to extend the rules of international law beyond the limits generally accepted by other nations, to the detriment of our own country.

When vital interests of the United States are at stake, when the sentiment of the country is clear, the government should not hesitate to exercise powers under existing law. To seek unnecessary reaffirmation of these powers from the Congress now would be to run

a serious danger of delay and by delay possibly to endanger the vital interests of the people of the country in keeping war from our own shores.

Charles C. Burlingham
Thomas D. Thacher
George Rublee
Dean Acheson

New York, Aug. 10, 1940.

The Six Hundred and Seventy-Seventh Press Conference
on Board President's train en route to Washington, D.C.,

September 3, 1940

The President: Hello, good people, how are you? This was an easy trip for you, an awfully easy trip with no news. Why, there is old Fred (Mr. Essary). Fred, who let you come?

Q. (Mr. Essary) I did not ask anybody's permission. I just came.

The President: You just came. Gosh, I am glad that somebody got up to give the lady (Miss Fleeson) a seat. Fred, you have become a trouper again; it is all right.

Q. (Mr. Essary) So I have.

The President: Sit on the floor, Felix (Mr. Belair); you are too big to stand up.

Q. This is the first train Press Conference since Germany moved into Denmark.

The President: I guess that's right.

Q. We had a big talk with you at that time about Iceland and Greenland.

The President: You are learning geography. There was another Press Conference where we talked about the Celebes Islands. (laughter)

A. We were clear to the Cocos before we knew. (laughter)

The President: I have today nothing for you as news from here, although I have something for you for your own information. It is a Washington story that will be out there in twenty-two minutes, so the story will come from Washington. I cannot add to it, but you ought to know about it because you will probably get all kinds of flashes, "For God's sake, get some news." Well, there isn't any news.

In twenty minutes there is going to the Congress the following message, which I am going to read from the only copy I have, which is a rough copy, so there is no use taking it down.

Mr. Early: The text will be released there (in Washington).

Mr. President: It is probably the most important thing that has come for American defense since the Louisiana Purchase. (Turning to Mr. Essary) That goes back before you and me.

Q. (Mr. Essary) That is quite far.

The President: How far? About 1803?

Q. (Mr. Essary) About.

The President: (reading)

"TO THE CONGRESS OF THE UNITED STATES"

"I transmit herewith for the information of the Congress notes exchanged between the British Ambassador at Washington and the Secretary of State on September 2, 1940."

- in other words, that is yesterday - (reading)

"under which this government has acquired the right to lease naval and air bases in Newfoundland, and in the islands of Bermuda, the Bahamas, Jamaica, St. Lucia --"

Q. (interposing) What is the last one?

The President: St. Lucia.

Q. How do you spell it?

The President: S-t. L-u-c-i-a, period. Now, I am not fooling on those. These are real places. (laughter) (the President continued reading)

"--Trinidad, and Antigua, and in British Guiana - "

Get out the map. We haven't even got an atlas on board. That is terrible. (reading)

" - also a copy of the opinion of the Attorney General dated August 27, 1940 regarding my authority to consummate this arrangement.

Q. What is the date?

The President: August twenty-seventh. And also (reading)

"The right to bases in Newfoundland and Bermuda are gifts - generously given and gladly received."

Mind you, all these places being mentioned are what they call Crown Colonies.

Q. Are these ninety-nine year leases, Mr. President?

The President: Yes. (reading)

"The other bases mentioned have been acquired in exchange for fifty of our over-aged destroyers."

Q. This is breaking out of Washington? (laughter)

The President: This is breaking out of Washington. This is not a Press Conference; just a little information conference.

Q. No connection between those bases and the destroyers?

Q. Which of the bases are being leased?

The President: They are all ninety-nine years, but Newfoundland and Bermuda are gifts. In other words, there is no exchange in relation to them.

Q. No quid pro quo?

The President: No quid pro quo on those at all. You see the point? ...

Q. The release clause applies to the two gifts?

The President: Yes. (reading)

"This is not inconsistent in any sense with our status of peace. Still less is it a threat against any nation. It is an epochal and far-reaching act of preparation for continental defense in the face of grave danger.

"Preparation for defense is an inalienable prerogative of a sovereign state. Under present circumstances this exercise of sovereign right is essential to the maintenance of our peace and safety. This is the most important action in the reinforcement of our national defense that has taken place since the Louisiana Purchase. Then, as now, considerations of safety from overseas attack were fundamental.

"The value to the Western Hemisphere of these ports of security is beyond calculation. Their need has long been recognized by our country, and especially by those primarily charged with the duty of charting and organizing our own naval and military defense. They are essential to the - "

a lot more geography for you - (reading)

" - protection of the Panama Canal, Central America, the Northern portion of South America, the Antilles, Canada, Mexico, and our own Eastern and Gulf Seaboards. Their consequent importance in hemispheric defense is obvious. For these reasons I have taken advantage of the present opportunity to acquire them."

That is all.

Q. Mr. President, when will the destroyers be sent to Great Britain?

The President: Oh, some of them are - I don't know, reasonably soon.

Q. Would it be a fair assumption to say that some are on the way?

The President: No, I would not say that.

Q. Will the British send crews over to take the destroyers?

The President: I don't know; I don't know.

Q. Where are the destroyers now?

The President: I don't know.

Q. Mr. President, does this require Senate ratification?

The President: Listen: (reading)

"I transmit herewith for the information of the Congress - "

these notes and the opinion. And, at the end, I say (reading)

"For these reasons I have taken the advantage of the present opportunity to acquire them"

Q. Mr. Jackson's opinion?

The President: It is all over; it is all done.

Q. Mr. President, when might work start on these bases?

The President: Don't please, go any further than this. As soon as we can. In other words, I cannot tell anything about it - they are all "if" questions. If you go beyond this, they are all "if" questions, every one.

Q. Can you say which will be naval bases and which will be air bases?

The President: That is an "if" question. You will see by the notes accompanying this that there is to be created, on both sides, a board which will take up the question of location; and that board either has been announced in Washington, or will be very soon. It either has proceeded, or is about to proceed with its duty.

Q. Might that be comprised of officers from the services?

The President: That board is proceeding or will proceed almost immediately on its duties.

Q. How close is the formula that you have used to make this public to the procedure President Monroe used in announcing the Monroe Doctrine? Wasn't there an exchange of correspondence?

The President: I think that was employed too.

Q. An exchange of correspondence?

The President: Of course there was no mutuality in the Monroe Doctrine. There is mutuality here.

This has to be for background - it is for your own information, historical, without attribution. In about - I cannot give you the exact dates - about 1803, Napoleon was at war with Great Britain. France was a belligerent, and we were scared pink because France had bought from Spain the whole of the Louisiana Territory, and especially the mouth of the Mississippi. That was the important thing to our defense. France had a very weak Army down there in Louisiana. I think they had one regiment, something like that, for the whole of the territory. We were scared to death that there might be, as an outcome of the Napoleonic wars, some threat or some danger of some power going in there and going up the valley to connect up with Canada, the back part of Canada, thereby confining the States practically to this side of the Mississippi.

There was an awful lot of discussion about it, and everybody was yelling, "For God's sake protect us," all over the country, "by acquiring, if you can, this mouth of the Mississippi." Of course in those days they, none of them, realized what they were getting with the Louisiana Purchase, that they were getting that tremendous back country that went clear up to Montana, but they saw it primarily from the standpoint of the mouth of the Mississippi and the control of the main stem of the Mississippi.

So Jefferson sent Monroe and Chancellor Robert R. Livingston over to Paris -

Q. (interposing) One of your relatives, wasn't he?

The President: Relative, yes. He was my wife's great grandfather. (laughter)

And they went to Paris and negotiated with Napoleon, who was a belligerent, fighting Great Britain at the time. In fact, he was fighting most of Europe. They made this deal for the purchase of the whole thing from Napoleon for a price of - as I remember it - what was it, \$15,000,000?

Q. Yes, sir.

The President: And Napoleon, at the same time, verbally agreed that a portion of the money would be spent over here buying certain naval supplies and certain food supplies that he needed over there for the continuation of his wars. The contract was signed over there in Paris, Monroe and I think, Livingston hopped the first sail boat they could, and came back to Washington, and announced the thing had been done. Thereupon there ensued a long session in the Cabinet and every other place, as to whether such a thing could be done. You see, there was nothing said about it in the Constitution.

Q. I thought Jefferson did it - the Louisiana Purchase?

The President: But it was Monroe and Livingston who made the actual purchase. They brought back a signed contract to him. He said, "Fine; I accept it," and then there ensued this discussion in the early days when the Constitution had never been tried out very much. There wasn't anything in the Constitution about it, and to put the thing up to Congress would have involved a delay. Now, the main thing was to put our hands on it, to get it; and Jefferson, thereupon, as soon as word came from the two commissioners, proceeded to take over Louisiana. It was a fait accompli. He got the opinion of the Attorney General that he could do it without a treaty, do it for the national defense as Commander-in-Chief, and do it as President, as well, in an obvious emergency.

And, later on, he asked, not the Senate but he asked the Appropriations Committee of the House to please appropriate \$15,000,000 to him as an item in an appropriation bill, which was done. There was never any treaty, there was never any two-thirds vote in the Senate, and today it is about one-third of the whole United States.

And we are going back a hundred - about a hundred and thirty-seven years - for our historical precedent and authority. It is a very interesting thing.

Q. Did Mr. Jackson, in setting up his opinion saying that you had authority to do that, set forth the Louisiana Purchase as a historical precedent?

The President: I think that is mentioned in it ...

Q. Any value placed upon the destroyers?

The President: You are thinking in terms of dollars and cents and pounds and shillings and you should, in a great emergency, remove pure figures from your mind. Some people will say, undoubtedly - this is still off the record - that, from the point of view of dollars and cents, it is not a good deal. And others will say, "My God, the old Dutchman and Scotchman in the White House has made a good trade." Personally, you can take your money and take your choice. Personally, I think it's a good trade.

Q. Are we back on the record again?

The President: No, you are not on the record.

Q. For the record, Mr. President, is it proper to say that these destroyers are released to the British in fee?

The President: Yes, in fee.

I have not finished the story. There is also to be given out in Washington, simultaneously - you will have to leave this off

the record as coming from me; make it just pure information - a restatement by Prime Minister Winston Churchill on what he said on the fourth of June to Parliament, and this is a restatement to the effect that the British Fleet, in case it is made too hot for them in home waters, is not going to be given to Germany or sunk.

Q. What is the status of the statement? Are they using it?

The President: They are using it, I do not know how. In other words, the declaration of June fourth, which was perfectly clear and obvious, is reiterated and restated now.

Q. In this correspondence that will accompany this (release)?

The President: Yes.

Q. Is this part of the quid pro quo?

The President: What?

Q. Is that part of the deal?

The President: No, it happens to come along at the same time.

Q. Fortuitously?

The President: Fortuitously, that is the word.

Q. Can you help us draw conclusions, not as coming from you but for our own guidance? Would that mean moving the Fleet to Canada?

The President: No, no. Get out your atlas. It might go to whatever place in the British Empire needed it for defense. That is the point. It might be Canada, it might be somewhere else. The Lord only knows.

Q. It might be the Great Bay of Bermuda, sir?

The President: Nobody knows.

Q. Have the British set out in these negotiations exactly where they are to be located, these bases, or -

The President: (interposing) Well, that is set out. For instance, Newfoundland, as will appear in the notes accompanying this, the Newfoundland base or bases - again you have to know your chart - will be roughly the south shore of Newfoundland, including the Avalon Peninsula, which is a thing that sticks out in a southerly direction and on which St. Johns is situated -

Q. (interposing) Does that include Botwood?

The President: Take it this way: Newfoundland is, roughly, a square with a long thing sticking way up north, that is the northern peninsula, and right where the thing is sticking up north comes in on the north shore is Botwood. Down on the south shore is the Avalon Peninsula on the extreme Eastern end. That is a straight shore line with a lot of fords in it, and our base will be somewhere on the south shore.

Then, in Bermuda, it will be on the east coast, or on the Great Bay. Of course that is obvious because you couldn't go to the west coast; there are a lot of reefs.

In the Bahamas it will be on the southerly side. Wait a minute, it will be on the - they run - I will have to describe it as this: The Bahamas run on Crooked Island Passage. There are some further over east of it, but the main Bahamas run from northeast to southwest of the entrance to the Crooked Island Passage and probably it (the base) will be somewhere in there. In other words, we are referring to it as the easterly side of the Bahamas.

Q. What I meant is, do we have the right to choose?

The President: It will be done by the joint board.

Then, on Jamaica, it will be on the south shore of Jamaica - which is quite long.

In St. Lucia, it will be on the lee side, which is the westerly.

In Trinidad, it will, obviously, be on the Gulf of Paria, because there is no other place; and, in Antigua it will be in the only harbor which, again, is on the lee side.

In Guiana, it will be at a point within, roughly fifty miles of Georgetown, which is the capital.

In other words, there is plenty of leeway as to the actual sites, but the whole thing has been very, very carefully worked out as to general location.

Q. The British Honduras is not mentioned?

The President: No, no.

Q. Does this understanding postulate the establishment of an agreement?

The President: No there is nothing said here.

Q. In other words, would it postulate that -

The President: (interposing) I would stick to this. You have all this information. In other words, don't say this is the fore-runner of this, that or the other thing. You might hit, but the chances are ten to one that you would miss ...

Q. Will there be any joint control of the base, or will there be sovereignty?

The President: Nobody knows what sovereignty is. There will be complete American control. That word "sovereignty", you know, went out some years ago.

Q. Did the British lay down any conditions, sir, that the fifty destroyers, including the twenty mosquito boats, must be in condition?

The President: No.

Q. They practically all are?

The President: They practically all are.

Q. Mosquito boats are not mentioned.

The President: No. Mosquito boats are not mentioned in there.

Q. Will this apply to airplanes as well as ships?

The President: All it says is, "air and naval bases." I think it is the other way around, "naval and air bases."

Mr. Early: I think you might explain that the message is going up today and that the House is in session but not the Senate.

The President: It is primarily a question of synchronization - this is off the record. We had to pick a time which was mutually satisfactory for the British and ourselves.

That is about the size of it. And for several days - today was the day decided on, even before the Senate decided to adjourn over until tomorrow. But the House is in session today; and, as you know, very often I send up messages when there is only one House in session. Furthermore, Senator Lundeen's tragic death will probably cause the Senate, when they do meet tomorrow, to transact no business but to adjourn immediately in his memory.

Q. Is Churchill sending a similar message to Parliament?

The President: I don't know whether he is or whether he is just making a statement. I do not know even whether Parliament is in session, but there is something being given out at five or six o'clock this evening.

Q. How long have the negotiations been under way?

The President: I would be afraid to say because I am doing so many things these days. I'd say several weeks. That covers a multitude of sins. That means anywhere from two on up.

Q. We cannot deliver these destroyers ourselves, can we?

The President: What?

Q. We cannot deliver these destroyers ourselves, can we?

The President: Sure.

Q. I mean take them over?

The President: Oh, no; not over there ...

Prime Minister Churchill's letter to President Roosevelt, dated

December 8, 1940

12. The prime need is to check or limit the loss of tonnage on the Atlantic approaches to our island. This may be achieved both by increasing the naval forces which cope with the attacks and by adding to the number of merchant ships on which we depend. For the first purpose there would seem to be the following alternatives:

(1) The reassertion by the United States of the doctrine of the freedom of the seas from illegal and barbarous methods of warfare, in accordance with the decisions reached after the late Great War, and as freely accepted and defined by Germany in 1935. From this, United States ships should be free to trade with countries against which there is not an effective legal blockade.

(2) It would, I suggest, follow that protection should be given to this lawful trading by United States forces, i.e., escorting battle-ships, cruisers, destroyers, and air flotillas. The protection would be immensely more effective if you were able to obtain bases in Eire for the duration of the war. I think it is improbable that such protection would provoke a declaration of War by Germany upon the United States, though probably sea incidents of a dangerous character would from time to time occur. Herr Hitler has shown himself inclined to avoid the Kaiser's mistake. He does not wish to be drawn into war with the United States until he has gravely undermined the power of Great Britain. His maximum is "One at a time."

The policy I have ventured to outline, or something like it, would constitute a decisive act of constructive nonbelligerency by the United States, and, more than any other measure, would make it certain that British resistance could be effectively prolonged for the desired period and victory gained.

(3) Failing the above, the gift, loan, or supply of a large number of American vessels of war, above all destroyers, already in the Atlantic is indispensable to the maintenance of the Atlantic route. Further, could not the United States Naval Forces extend their sea control of the American side of the Atlantic so as to prevent the molestation by enemy vessels of the approaches to the new line of naval and air bases which the United States is establishing in British islands in the Western Hemisphere? The strength of the United States Naval Forces is such that the assistance in the Atlantic that they could afford us, as described above, would not jeopardize the control of the Pacific.

(4) We should also then need the good offices of the United States and the whole influence of its Government, continually exerted to procure for Great Britain the necessary facilities upon the southern and western shores of Eire for our flotillas, and still more important, for our aircraft, working to the westward into the Atlantic. If it

were proclaimed an American interest that the resistance of Great Britain should be prolonged, and the Atlantic route kept open for the important armaments now being prepared for Great Britain in North America, the Irish in the United States might be willing to point out to the government of Eire the dangers which its present policy is creating for the United States itself.

His Majesty's Government, would, of course, take the most effective measures beforehand to protect Ireland if Irish action exposed it to German attack. It is not possible for us to compel the people of Northern Ireland against their will to leave the United Kingdom and join Southern Ireland. But I do not doubt that if the government of Eire would show its solidarity with the democracies of the English-speaking world at this crisis, a council for Defense of all Ireland could be set up out of which the unity of the island would probably in some form or other emerge after the war.

APPENDIX C

DOCUMENTS RELATED TO THE INITIATION OF THE KOREAN WAR

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The American Ambassador in Korea to the Secretary of State

Transcription

According to Korean Army Reports which are partly confirmed by Korean Military Advisory Group field adviser reports, North Korean forces invaded Republic of Korea territory at several points this morning. Action was initiated about 4 a.m. Ongjin was blasted by North Korean artillery fire. About 6 a.m. North Korean infantry commenced crossing the 38th parallel, in the Ongjin area, Kaesong area, and Chunchon area, and an amphibious landing was reportedly made south of Kangnung on the east coast. Kaesong was reportedly captured at 9 a.m., with some ten North Korean tanks participating in the operation. North Korean forces, spearheaded by tanks, are reportedly closing in on Chunchon. Details of the fighting in the Kangnung area are unclear, although it seems that North Korean forces have cut the highway. I am conferring with Korean Military Advisory Group advisers and Korean officials this morning concerning the situation.

It would appear from the nature of the attack and the manner in which it was launched that it constitutes an all-out offensive against the Republic of Korea.

Muccio

Statement to the Security Council by the Deputy Representative of the
United States to the United Nations (Gross), June 25, 1950

At 4 o'clock in the morning of Sunday, 25 June, Korean time, armed forces from North Korea commenced an unprovoked assault against the territory of the Republic of Korea. This assault was launched by ground forces along the 38th parallel and the Ongjin, Kaesong, and Chunchon sectors, and by amphibious landings on the east coast in the vicinity of Kangnung. In addition, North Korean aircraft have attacked and strafed Kimpo airport in the outskirts of the capital city of Seoul.

The facts and a general outline of the situation have now been reported by the United Nations Commission on Korea and are reflected in document S/1496, to which the President has referred. Under these circumstances, this wholly illegal and unprovoked attack by North Korean forces, in the view of my Government, constitutes a breach of the peace and an act of aggression. This is clearly a threat to international peace and security. As such, it is of grave concern to my Government.

It is a threat which must inevitably be of grave concern to the Governments of all peace-loving and freedom-loving nations. A full-scale attack is now going forward in Korea. It is an invasion upon a state which the United Nations itself, by Action of its General Assembly, has brought into being. It is armed aggression against the Government elected under United Nations supervision. Such an attack strikes at the fundamental purposes of the United Nations Charter. Such an attack openly defies the interest and authority of the United Nations. Such an attack, therefore, concerns the vital interest which all the Member nations have in the Organization. The history of Korean problems is well known to the members of the Council. At this critical hour I shall not review that history in detail.

May I be permitted to recall just a few of the milestones in the development of the Korean situation? A Joint Commission of the United States of America and the Union of Soviet Socialist Republics sought unsuccessfully, for two years, to agree to ways and means of bringing to Korea the independence which we assumed would automatically come when Japan was defeated. This two-year deadlock prevented 38 million people in Korea from getting the independence it was agreed was their right. My Government, thereupon, sought to hold a Four Power Conference, at which China and the United Kingdom would join the United States and the Soviet Union in seeking agreement on the independence of Korea. The Soviet Union rejected that proposal.

The United States then asked the General Assembly to consider the problem. The Soviet Union opposed that suggestion. The General Assembly, in resolution 112 (II) of 14 November 1947, created the United Nations Temporary Commission on Korea. By that resolution, the General Assembly recommended the holding of elections not later than 31 March 1948 to choose representatives with whom the Commission might consult

regarding the prompt attainment of freedom and independence for the Korean people. These elected representatives would constitute a national assembly and establish a national government for Korea. The General Assembly further recommended that, upon the establishment of a national government, that government should, in consultation with the Commission, constitute its own national security forces and dissolve all military or semi-military formations not included therein. The General Assembly recommended that the national government should take over the functions of government from the Military Command and from the civilian authorities of the North and South, and arrange with the occupying powers for the complete withdrawal from Korea of their armed forces, as early as practicable and, if possible, within ninety days.

Elections were held in South Korea and the Commission observed them. A government in South Korea was set up as a result of the elections observed by the Commission. The Commission was unable to enter North Korea because of the attitude of the Soviet Union.

The United Nations Temporary Committee on Korea, in its report to the third session of the General Assembly, stated that not all the objectives set forth for it had been fully accomplished and that, in particular, unification of Korea had not been achieved. Notwithstanding the frustrations and difficulties which the Temporary Commission had experienced in Korea, the General Assembly, at its third session, in resolution 195 (III) continued the Commission's existence and requested it to go on with its efforts to bring North and South Korea together.

One aspect of the resolution 195 (III) adopted by the third session of the General Assembly should, I feel, be particularly emphasized. The General Assembly declared that a lawful government had been established in Korea as a result of the elections observed by the Commission, and declared further that this was the only lawful government in Korea. This is a most significant fact. The General Assembly declared further that the Government of Korea was based on elections which were a valid expression of the free will of the electorate of that part of Korea, and which were observed by the United Nations Commission. In the light of this declaration, my Government on 1 January 1949, extended recognition to the Government of the Republic of Korea, and more than thirty States have, since that time, also accorded recognition to that Government.

The United Nations Commission worked toward the United Nations objectives of the withdrawal of occupying forces from Korea, the removal of the barriers between the regions of the North and the South and the unification of that country under a representative government freely determined by its people.

In 1949 as in 1948, the Commission's efforts to attain access to North Korea, which included direct intercourse with the Northern authorities and endeavors to negotiate through the Government of the U.S.S.R. were fruitless. The Commission was unable to make progress either towards the unification of Korea or toward the reduction of

barriers between the Republic of Korea and the Northern authorities. The Commission reported to the General Assembly that the border of the 38th parallel was becoming a scene of increasingly frequent exchanges of fire and armed raids, and that this constituted a serious barrier to friendly intercourse among the people of Korea.

The Commission observed the withdrawal of United States forces, which was completed on 19 June 1949. Although it signified its readiness to verify the fact of the withdrawal of the occupation forces of the Soviet Union from North Korea, the Commission received no response to its messages to the U.S.S.R. and, therefore, could take no action.

At its fourth session, the General Assembly, in resolution 293 (IV) adopted on 21 October 1949, again directed the Commission "to seek to facilitate the removal of barriers to economic, social and other friendly intercourse caused by the division of Korea." The General Assembly also authorized the Commission to "in its discretion to appoint observers, and to utilize the services and good offices of one or more persons, whether or not representatives on the Commission."

The United Nations Commission is presently in Seoul, and we have now received its latest report.

I have submitted a draft resolution S/1497 which notes the Security Council's grave concern at the invasion of the Republic of Korea by the armed forces of North Korea. This draft resolution calls upon the authorities in the North to cease hostilities and to withdraw their armed forces to the border of the 38th parallel. It requests that the United Nations Commission on Korea observe the withdrawal of the North Korean forces to the 38th parallel and keep the Security Council informed on the implementation and execution of the resolution. The draft resolution also calls upon Members of the United Nations to render every assistance to the United Nations in the carrying out of this resolution, and to refrain from giving assistance to the North Korean authorities. With the President's permission, I should like to read the draft resolution in full.

"The Security Council

"Recalling the finding of the General Assembly in its resolution of 21 October 1949 that the Government of the Republic of Korea is a lawfully established government having effective control and jurisdiction over that part of Korea where the United Nations Temporary Commission on Korea was able to observe and consult and in which the great majority of the people of Korea reside; and that this Government is based on elections which were a valid expression of the free will of the electorate of that part of Korea and which were observed by the Temporary Commission; and that this is the only such government in Korea;

"Mindful of the concern expressed by the General Assembly in its resolutions of 12 December 1948 and 21 October 1949 of the consequences which might follow unless Member States refrained from acts

derogatory to the results sought to be achieved by the United Nations in bringing about the complete independence and unity of Korea; and the concern expressed that the situation described by the United Nations Commission on Korea in its report menaces the safety and well-being of the Republic of Korea and of the people of Korea and might lead to open military conflict there;

"Noting with grave concern the armed invasion of the Republic of Korea by armed forces from North Korea,

"Determines that this action constitutes a breach of the peace,

"I. Calls upon the authorities in Korea

"(a) To cease hostilities forthwith; and

"(b) To withdraw their armed forces to the 38th parallel;

"II. Requests the United Nations Commission on Korea

"(a) To observe the withdrawal of the North Korean forces to the 38th parallel; and

"(b) To keep the Security Council informed on the execution of this resolution;

"III. Calls upon all Members to render every assistance to the United Nations in the execution of this resolution and to refrain from giving assistance to the North Korean authorities."

Resolution Adopted by the Security Council, June 25, 1950

The Security Council

Recalling the finding of the General Assembly in its resolution of 21 October 1949 that the Government of the Republic of Korea is a lawfully established government "having effective control and jurisdiction over that part of Korea where the United Nations Temporary Commission on Korea was able to observe and consult and in which the great majority of the people of Korea live; and that this Government is based on elections which were a valid expression of the free will of the electorate of that part of Korea and which were observed by the Temporary Commission; and that this is the only such government in Korea;

Mindful of the concern expressed by the General Assembly in its resolution of 12 December 1948 and of 21 October 1949 of the consequences which might follow unless Member States refrained from acts derogatory to the results sought to be achieved by the United Nations in bringing about the complete independence and unity of Korea; and the concern expressed that the situation described by the United Nations Commission on Korea in its report menaces the safety and well being of the Republic of Korea and of the people of Korea and might lead to open military conflict there;

Noting with grave concern the armed attack upon the Republic of Korea by forces from North Korea,

Determines this action constitutes a breach of peace,

I. Calls upon the authorities of North Korea to withdraw their armed forces to the 38th parallel;

II. Requests the United Nations Commission on Korea,

(a) To communicate its fully considered recommendations on the situation with the least possible delay; and

(b) To observe the withdrawal of the North Korean forces to the 38th parallel; and

(c) To keep the Security Council informed on the execution of this resolution;

III. Calls upon all Members to render every assistance to the United Nations in the execution of this resolution and to refrain from giving assistance to the North Korean authorities.

Statement by the President, June 26, 1950

I conferred Sunday evening with the Secretaries of State and Defense, their senior advisers, and the Joint Chiefs of Staff about the situation in the Far East created by unprovoked aggression against the Republic of Korea.

The Government of the United States is pleased by the speed and determination with which the United Nations Security Council acted to order a withdrawal of the invading forces to positions north of the 38th parallel. In accordance with the resolution of the security council, the United States will vigorously support the effort of the council to terminate this serious breach of the peace.

Our concern over the lawless action taken by the forces of North Korea and our sympathy and support for the people of Korea in this situation, are being demonstrated by the cooperative action of American personnel in Korea, as well as by steps taken to expedite and augment assistance of the type being furnished under the Mutual Defense Assistance Program.

Those responsible for this act of aggression must realize how seriously the Government of the United States views such threats to the peace of the world. Willful disregard of the obligation to keep the peace cannot be tolerated by nations that support the United Nations Charter.

Message from the Korean National Assembly to the President and the
Congress of the United States

Translation

Seoul, June 26, 1950

Beginning in the early morning of 25 June, the North Korean Communist Army began armed aggression against the South. Your Excellency and our people, anticipating an incident such as today's, established a strong national defense force in order to secure a bulwark of democracy in the east and to render service to world peace. We again thank you for your indispensable aid in liberating us and in establishing our Republic. As we face this national crisis, putting up a brave fight, we appeal for your increasing support and ask that you at the same time extend effective and timely aid in order to prevent this act of destruction of world peace.

Statement by the President, June 27, 1950

In Korea the Government forces, which were armed to prevent border raids and to preserve internal security, were attacked by invading forces from North Korea. The Security Council of the United Nations called upon the invading troops to cease hostilities and to withdraw to the 38th parallel. This they have not done but on the contrary have pressed the attack. The Security Council called upon all members of the United Nations to render every assistance to the United Nations in the execution of this resolution. In these circumstances I have ordered United States air and sea forces to give the Korean Government troops cover and support.

The attack upon Korea makes it plain beyond all doubt that Communism has passed beyond the use of subversion to conquer independent nations and will now use armed invasion and war. It has defied the orders of the Security Council of the United Nations issued to preserve international peace and security. In these circumstances the occupation of Formosa by Communist forces would be a direct threat to the security of the Pacific and to the United States forces performing their lawful and necessary functions in that area.

Accordingly, I have ordered the Seventh Fleet to prevent any attack on Formosa. As a corollary of this action I am calling upon the Chinese Government on Formosa to cease all air and sea operations against the mainland. The Seventh Fleet will see that this is done. The determination of the future status of Formosa must await the restoration of security in the Pacific, a peace settlement with Japan, or consideration by the United Nations.

I have also directed that United States Forces in the Philippines be strengthened and that military assistance to the Philippines Government be accelerated.

I have similarly directed acceleration in the furnishing of military assistance to the forces of France and the Associated States in Indochina and the dispatch of a military mission to provide close working relations with those forces.

I know that all members of the United Nations will consider carefully the consequences of this latest aggression in Korea in defiance of the Charter of the United Nations. A return to the rule of force in international affairs would have far-reaching effects. The United States will continue to uphold the rule of law.

I have instructed Ambassador Austin, as the Representative of the United States to the Security Council, to report these steps to the Council.

UN doc. S/1503

The United Nations Commission on Korea to the Secretary-General

Seoul, June 26, 1950

North Korean advances have created dangerous situations with possibilities of rapid deterioration. Impossible estimate situation which will exist tomorrow in Seoul. In view Commission's past experience and existing situation Commission convinced North Korea will not heed Council resolution nor accept UNCOK good offices. Suggest have Council give consideration either invitation both parties agree on neutral mediator either to negotiate peace or requesting Member governments undertake immediate mediation. Commission decided to stand by in Seoul. Danger is that critical operations now in progress may end in matter of days and question of cease-fire and withdrawal North Korean forces suggested Council resolution prove academic.

UN doc. S/1507

The United Nations Commission on Korea to the Secretary-General

The Commission met this morning 1000 hours and considered latest reports on hostilities and results direct observation along parallel by UNCOK Military Observers over period ending 48 hours before hostilities began. Commission's present view on basis this evidence is, first, that judging from actual progress of operations Northern regime is carrying out well-planned, concerted, and full scale invasion of South Korea, second, that South Korean forces were deployed on wholly defensive basis in all sectors of the parallel, and third, that they were taken completely by surprise as they had no reason to believe from intelligence sources that invasion was imminent. Commission is following events and will report further developments.

UN doc. S/1518

The Acting Chairman of the United Nations Commission on Korea to the
President of the Security Council

Following report dated 24 June from United Nations field observers submitted to Commission on their return from field trip along 38th parallel commencing 9 June to report developments likely to involve military conflict is forwarded for information:

"General situation along parallel. Principal impression left with observers after their field tour is that South Korean Army is organized entirely for defense and is in no condition to carry out attack on large scale against forces of North. Impression is based upon following main observations:

1. South Korea Army in all sectors is disposed in depth. Parallel is guarded on southern side by small bodies troops located in scattered outposts with roving patrol. There is no concentration of troops and no massing for attack visible at any point.

2. At several points, North Korean forces are in effective possession of salients on south side parallel, occupation in at least one case being fairly recent date. There is no evidence that South Korean forces have taken any steps for or making any preparation to eject North Korean forces from any of these salients.

3. Proportion of South Korean forces are actively engaged in rounding up guerrilla bands that have infiltrated into the mountains area in the eastern sectors. It was ascertained that these bands are in possession of demolition equipment and are more heavily armed than on previous occasions.

4. So far as equipment of South Korea forces concerned, in absence of armour, air support, and heavy artillery, any action with object of invasion would, by any military standards, be impossible.

5. South Korea Army does not appear to be in possession of military or other supplies that would indicate preparation for large-scale attack. In particular, there is no sign of any dumping of supplies or ammunition, petrol, oil, lubricant, in forward areas. Roads generally little used and apart from convoy four trucks taking company from Kangnung westward to join rounding up guerrilla band, no concentration transport anywhere encountered.

6. In general, attitude South Korean commanders is one of vigilant defense. Their instructions do not go beyond retirement in case of attack upon previously prepared positions.

7. There is no indication of any extensive reconnaissance being carried out northward by South Korea Army nor any undue

excitement or activity at divisional headquarters or regimental levels to suggest preparation for offensive activity. Observers were freely admitted to all sections various headquarters including operations rooms.

8. Observers made special point inquiring what information was coming in regarding situation north of parallel. In some sectors it had been reported that civilians had recently been moved from areas adjoining parallel to north to depths varying from 4 to 8 kilometers. Another report received during night Thursday 22 June at regimental headquarters Ongjin was to effect that there was increased military activity in vicinity Chuyia about 4 kilometers north parallel. No reports, however, have been received of any unusual activity on part of North Korean forces that would indicate any impending change in general situation along parallel."

Szu-Tu

UN doc. S/1511

Resolution Adopted by the Security Council, June 27, 1950

The Security Council,

Having determined that the armed attack upon the Republic of Korea by forces from North Korea constitutes a breach of the peace,

Having called for an immediate cessation of hostilities, and

Having called upon the authorities of North Korea to withdraw forthwith their armed forces to the 38th parallel, and

Having noted from the report of the United Nations Commission for Korea that the authorities in North Korea have neither ceased hostilities nor withdrawn their armed forces to the 38th parallel and that urgent military measures are required to restore international peace and security, and

Having noted the appeal from the Republic of Korea to the United Nations for immediate and effective steps to secure peace and security,

Recommends that the Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area.

APPENDIX D *

DOCUMENTS RELATED TO THE TONKIN GULF "INCIDENTS"

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*The documents in this appendix are from Joseph C. Goulden, Truth is the First Casualty: The Gulf of Tonkin Affair - Illusion and Reality (New York: Rand McNally, 1969), pp. 253-264.

CHRONOLOGY OF EVENTS IN GULF OF TONKIN INCIDENTS

All distances are stated in nautical miles. Events in Washington are shown in italics. Local Gulf of Tonkin time has been converted to Eastern Daylight Time by the subtraction of 12 hours, that is, 4:00 A.M., August 5, in the Gulf of Tonkin is 4:00 P.M. August 4, in Washington. The notation "DOD" denotes items taken from an official Department of Defense chronology issued August 5, 1964, in the name of Defense Secretary Robert S. McNamara. The other items are drawn from the Senate Foreign Relations Committee hearing of February 20, 1968, interviews with crew members, and other research by the author. For purposes of communications security, times have been deleted or stated approximately for certain of the events.

July 30

Approximately 2:00 PM
(2:00 AM EDT)

South Vietnamese patrol boats leave Da Nang for Operation 34-A attack on Hon Me and Hon Ngu.

July 31

12:21 AM
(12:21 PM July 30 EDT)

Attack commenced on Hon Me.

12:20-12:30 AM
(12:20-12:30 PM July 30 EDT)

Attack commenced on Hon Ngu.

1:00 AM
(1:00 PM July 30 EDT)

Both attacks terminated.

Approximately 10:00 AM
(Approximately 10:00 PM
July 30 EDT)

USS Maddox, refueling on Yankee Station, sights 34-A boats, first reports them as Soviet P-6 craft, later learns they are South Vietnamese. Maddox begins patrol.

August 1

5:00 PM
(5:00 AM EDT)

Maddox arrives in vicinity of Check Point Charlie, nine miles off Cap Falaise.

Approximately 7:00 PM
(7:00 AM EDT)

Maddox seven miles off North Vietnamese coast, 13 miles south of Hon Ngu, steaming north toward Hon Me.

8:30 PM
(8:30 AM EDT)

Maddox comes within four to six miles of Hon Me and turns south toward Charlie.

August 2

2:00 AM
(2:00 PM August 1 EDT)

Maddox 12 miles due east of Point Delta, detects radar contact north of Hon Me, turns southeast away from island.

3:45 AM
(3:45 PM August 1 EDT)

Maddox reports that "intelligence information" (radio intercept) indicates "possible hostile action from North Vietnam" in vicinity of Charlie.

6:45 AM
(6:45 PM August 1 EDT)

Maddox now several miles southeast of Charlie, says information on hostile intent now "positive," believes continuation of patrol is "unacceptable risk," puts to sea. Admiral Roy L. Johnson, Seventh Fleet Commander, orders Maddox to resume patrol.

9:00 AM
(9:00 PM August 1 EDT)

Maddox proceeds to Point Delta, 11 miles east of coast off Lach Chao River, arriving at 9:45 AM. Turns south for point four miles seaward of Hon Me.

10:00 AM (DOD)
(10:00 PM August 1 EDT)

"Maddox reported observing an estimated 75 junks near her assigned patrol area... She reported changing her course in order to avoid the junk concentration."

11:00 AM
(11:00 PM August 1 EDT)

Maddox sights and tracks by radar three patrol craft apparently heading toward Hon Me. Maddox, its position at time 11 miles from Hon Me, turns away from island and heads for Point Delta.

12:30 PM (DOD)
(12:30 AM August 2 EDT)

"Maddox reported that three torpedo boats were on a southerly course heading toward the ship at extreme range (over ten miles). The Maddox at this point was about 30 miles from the coast."

2:40 PM (DOD)
(2:40 AM August 2 EDT)

"Maddox reported she was being approached by the high speed (estimated 45 to 50 knots) craft whose apparent intention was to conduct a torpedo attack and that she intended to open fire in self-defense if necessary."

3:08 PM
(3:08 AM EDT)

Maddox fired three "warning shots" at PT boats that had closed to 9,800 yards.

3:08 PM (DOD)
(3:08 AM EDT)

"Maddox reported she was being attacked by the three PT craft. She opened fire with her five-inch battery after three warning shots failed to slow down the attackers."

3:08 PM (DOD)
(3:08 AM EDT)

"The PTs continued their closing maneuvers and two of the PTs closed to 5,000 yards, each firing one torpedo. The Maddox changed course in an evasive move and the two torpedoes passed close aboard the starboard side (100 to 200 yards).

USS Ticonderoga... advised she was sending four already airborne F-8E's (Crusaders) with rockets and 20mm ammunition to provide air cover for Maddox.

3:21 PM (DOD)
(3:21 AM EDT)

The third PT moved up to the beam of the Maddox and received a direct hit by a five-inch round, and at the same time dropped a torpedo into the water which was not seen to run. Machine gun fire from the PTs was directed at the Maddox. However, there was no damage or injury to personnel. The Maddox continued in a southerly direction to join with the C. Turner Joy... as Ticonderoga aircraft commenced attacking the PTs. Zuni rocket runs and 20mm strafing attacks were directed against two of the PTs and they were damaged. The third PT remained dead in the water after the direct hit by the Maddox."

3:29 PM
(3:29 AM EDT)

Engagement ends. Aircraft escort Maddox toward South Vietnamese waters.

Early evening
(Early morning EDT)

Admiral Moorer, Pacific Fleet Commander, orders new patrol, with Turner Joy joining Maddox. New route calls for them to steam toward shore during day, retire to sea at night.

Late evening
(Late morning EDT)

Herrick advises Maddox and Turner Joy North Vietnam has "thrown down the gauntlet" and they will be treated as belligerents from first detection and must consider themselves as such."

August 3

Destroyers proceed north up coast from 17th Parallel, turning in mid-afternoon to pass 9.2 miles off the islands of Hon Vat and Hon Me; turn east to sea at dusk.

4:00 PM
(4:00 AM EDT)

South Vietnamese 34-A boats leave DaNang and proceed up coast, approximating earlier course of Turner Joy and Maddox.

Evening
(Morning EDT)

Herrick recommends termination of patrol.

Evening
(Morning EDT)

Admiral Sharp, Pacific Forces Commander, refuses. Directs destroyers, on August 4, to remain north of 19 degrees, 10 minutes north between Charlie and Delta to avoid interference with 34-A Operations and "possibly draw North Vietnamese PGMs to northward away from area of 34-A Ops."

August 4

12:30 AM
(12:30 PM August 3 EDT)

Operation 34-A boats commence attacks on radar station on Cap Vinh Son and security post off Cua Ron, both in North Vietnam. Attacks end around 1:00 AM (1:00 PM August 3 EDT).

Approximately 2:00 AM
(2:00 PM August 3 EDT)

Herrick reports that "intelligence information" (radio intercepts) indicates that North Vietnam considers his patrol to be a part of 34-A Operations. Asks constant air cover for protection.

Approximately 4:00 AM
(4:00 PM August 3 EDT)

Request for continuing air cover refused, but Herrick is told aircraft are ready for "launch and support on short notice."

Maddox and Turner Joy spend daylight hours cruising along North Vietnam coast; pass Hon Me at 13 miles' distance around dawn.

Early afternoon
(Early morning EDT)

Maddox reports "material deficiency" in its sonar; later says repairs made.

2:30 PM
(2:30 AM EDT)

Maddox makes radar contact 15 miles to west.

Late afternoon (DOD)
(Early morning EDT)

"The Maddox reported radar contact with unidentified surface vessels who were paralleling its track and the track of the Turner Joy." (The contact was intermittent, and was not held by the Turner Joy, according to Herrick's cables.)

7:40 PM (DOD)
(7:40 AM EDT)

"The Maddox reported that from actions being taken by the unidentified vessels, an attack by them appeared imminent. The Maddox was heading southeast near the center of the Gulf of Tonkin in international waters approximately 65 miles from the nearest land."

(Deleted)

Maddox detects contact at 36.4 miles; speed 33 knots. Contact not held by Turner Joy. Considered threat by Maddox; maximum boiler power ordered by both destroyers.

(Deleted)

Maddox holds surface contact at 37 miles; within five minutes two more contacts at same locale.

(Deleted)

Herrick evaluates situation as a "trap."

(Deleted)

Turner Joy still has no contacts.

(Deleted)

Maddox reports three radar contacts merging into one at range of 32 miles.

Approximately 8:15 PM
(8:15 AM EDT)

Maddox, now 60 miles from coast, says it has "received information" (another radio intercept) that attack is imminent; proceeds south at full speed.

8:36 PM (DOD)
(8:36 AM EDT)

"The Maddox established new radar contact with two unidentified surface vessels and three unidentified aircraft. At this time, US fighter aircraft were launched from the USS Ticonderoga... to provide protection against possible attack from the unidentified vessels..."

9:08 (DOD)
(9:08 AM EDT)

"The Maddox reported that the unidentified aircraft had disappeared from its radar screen and that the surface vessels were remaining at a distance. The US aircraft... commenced defensive patrol over the Maddox and Turner Joy."

9:30 PM (DOD)
(9:30 AM EDT)

"Additional vessels were observed on the Maddox radar, and these vessels began to close rapidly on the destroyer patrol at speeds in excess of 40 knots. The attacking craft continued to close rapidly from the west and south and the Maddox reported that their intentions were evaluated as hostile."

(Deleted)

Maddox ordered aircraft to investigate unknown target (designated "U") at 13 miles, speed 30 knots. Results negative.

(Deleted)

Maddox opened fire in area of another contact designated "V." Turner Joy fires on contact "V-1" to the right of "V."

(Deleted)

Maddox loses contact with "V." At same time Maddox sonar reports torpedo. Warning is transmitted to Turner Joy.

9:52 PM (DOD)
(9:52 AM EDT)

"The destroyers reported they were under continuous torpedo attack and were engaged in defensive counter fire."

(Deleted)

Turner Joy changes course to evade torpedo reported by Maddox. Turner Joy reports sighting wake. According to reporting cable: "At no time did Turner Joy sonar detect torpedo noises."

9:30 PM to midnight
(9:30 AM to noon EDT)

Stankevitz, in combat information center, states he had no meaningful radar contacts after initial approach of unidentified vessels.

(Deleted)

Aircraft arrive from Ticonderoga; at request of Turner Joy, begin strafing general area; Turner Joy continues firing. Maddox radar unable to pick up any target contacts.

(Deleted)

Maddox sonar reports another torpedo, warning passed to Turner Joy.

10:15 PM (DOD)
(10:15 AM EDT)

"The destroyers reported that they had avoided torpedoes and had sunk one of the attacking vessels."

10:42 PM (DOD)
(10:42 AM EDT)

"The destroyers reported that they had evaded additional torpedoes and had sunk another of the attacking craft. Other protective aircraft had arrived overhead, but weather and darkness were hampering their capabilities."

10:52 PM (DOD)
(10:52 AM EDT)

"The Maddox reported that the destroyers were again under attack."

11:15 PM
(11:15 AM EDT)

Turner Joy reports that five torpedoes have been fired, and that she is planning to ram one of the North Vietnamese boats.

Approximately midnight
(Approximately noon EDT)

Turner Joy reports: "We think a PT boat sunk one of its own boats."

Noon EDT
(Midnight Tonkin Time)

President Johnson convenes National Security Council, then lunches with McNamara, Rusk, McCone, and McGeorge Bundy. Johnson orders drafting of target list for retaliatory raids.

Midnight (DOD)
(Noon August 4 EDT)

"The patrol reported that, even though torpedoes had been fired at them, they had suffered no hits nor casualties and that the defensive aircraft... were illuminating the area and attacking the enemy surface craft."

August 5

Approximately 12:10 AM
(Approximately 12:10 PM
August 4 EDT)

Maddox reports that seven torpedoes already fired, two more "now" in the water.

Approximately 12:25 AM
(12:25 PM August 4 EDT)

Maddox reports that she and Turner Joy counted 22 torpedoes fired.

12:32 AM (DOD)
(12:32 PM August 4 EDT)

"The patrol reported that at least two enemy craft had been sunk and that low ceilings continued to hamper the aircraft operations."

Approximately 12:35 AM
(12:35 PM August 4 EDT)

Captain Earnhart, on the Turner Joy bridge, sees flicker of searchlight. Neither he nor Herrick have heard gunfire nor reports of gunfire, other than their own, during the night.

12:54 AM (DOD)
(12:54 PM August 4 EDT)

"The Turner Joy reported that during the engagement, in addition to the torpedo attacks, she was fired upon by

1:25 AM
(1:25 PM August 4 EDT)

automatic weapons while being illuminated by searchlights."

Herrick reports the Turner Joy claims to have "positively" sunk three vessels, but adds, "entire action leaves many doubts except for apparent attempted ambush at beginning. Suggest thorough reconnaissance in daylight by aircraft." States "freak weather conditions and over-eager sonarman" may have accounted for supposed torpedo sightings, and "suggest complete evaluation before any further action."

1:30 AM (DOD)
(1:30 PM August 4 EDT)

"The destroyers reported that the attacking craft had apparently broken off the engagement."

3:00 PM August 4 (EDT)
(3:00 AM August 5 Tonkin Time)

McNamara begins meeting with Joint Chiefs and Deputy Secretary Cyrus Vance to review data and plan raids.

4:34 PM August 4 (EDT)
(4:34 AM August 5 Tonkin Time)

Pentagon receives Herrick report that "details of action present a confusing picture although certain that original ambush was bona fide."

4:40 PM August 4 (EDT)
(4:40 AM August 5 Tonkin Time)

Admiral Sharp, Pacific Commander, discusses Herrick report with McNamara by phone from Hawaii, cites Turner Joy "identification" of cockpit lights on attacking boats and torpedo wakes as evidence attacks occurred. McNamara tells him to be "damned sure that the attack had taken place."

Approximately 5:00 PM (EDT)
(5:00 AM August 5 Tonkin Time)

Sharp asks Maddox to confirm "absolutely" that ships were attacked; directs that answer go to Ticonderoga to insure prompt forwarding to his headquarters.

5:00 PM EDT
(5:00 AM August 5 Tonkin Time)

Congressional leaders told to come to White House at 6:00 PM for meeting with Johnson.

5:23 PM EDT
(5:23 AM August 5 Tonkin Time)

McNamara again receives telephone report from Sharp saying he is sure attack occurred; cites radio intercept intelligence.

Approximately 5:25 AM
(5:25 PM August 4 EDT)

Turner Joy ordered to "locate debris to substantiate" its claim of sinkings.

5:47 PM EDT
(5:47 AM August 5 Tonkin
Time)

Johnson orders McNamara to make one final check with Sharp.

6:00 PM EDT
(6:00 AM August 6 Tonkin
Time)

Johnson opens National Security Council meeting with announcement he has ordered retaliatory bombings.

6:00 PM EDT
(6:00 AM August 5 Tonkin
Time)

Pentagon issues announcement of second incident.

6:07 PM EDT
(6:07 AM August 5 Tonkin
Time)

McNamara issues attack order to Sharp over phone.

6:10 AM
(6:10 PM August 4 EDT)

Rear Admiral Moore, Task Force 77 Commander, receives order to be prepared to strike but to hold for final order.

6:15 PM August 4 EDT
(6:15 AM August 5 Tonkin
Time)

Johnson tells congressional leaders strike has been ordered.

8:00 AM
(8:00 PM August 4 EDT)

Turner Joy, replying to demand for confirmatory evidence, says that crew members saw torpedoes and that a target burned when hit; Barnhart among men who saw black smoke. Cable admits sinking only "highly possible," not "definite."

8:00 AM
(8:00 PM August 4 EDT)

Moore receives go-ahead to bomb North Vietnam.

9:00 AM
(9:00 PM August 4 EDT)

At Washington's order, Hawaii sends Turner Joy an "urgent" message to amplify its battle reports: "Who are witnesses. What is witness reliability?" Most important that positive evidence substantiating type and number of attacking forces be gathered and disseminated."

10:40 AM
(10:40 PM August 4 EDT)

First planes leave Ticonderoga and Constellation, bound for North Vietnam.

10:59 PM EDT
(10:59 AM August 5 Tonkin
Time)

Herrick report finally reaches McNamara's command post. States that air support did not locate any targets; that Maddox scored no known hits, and never positively identified a boat. Notes that "probable" torpedo was detected on sonar;

"The first boat to close Maddox probably fired torpedo at Maddox which heard but not seen. All subsequent Maddox torpedo reports are doubtful in that it is suspected that sonarman was hearing ship's own propeller beat."

11:37 PM EDT
(11:37 AM August 5 Tonkin
Time)

President Johnson tells nation over television that "air action is now in execution" against North Vietnam.

1:15 PM
(1:15 AM August 5 EDT)

Jets from Ticonderoga drop first bombs of war on North Vietnam, hitting patrol boat base and support facilities at Quang Khe.

1:15 PM
(1:15 AM August 5 EDT)

Turner Joy responds to "urgent" message for confirmation; says officers of "good reliability" saw torpedo wake. "Estimate two PTs attacked; however, must admit two factors deter - no ECM (electronic activity) from PT boats. No sonar indication of torpedo noises."

1:25 PM
(1:25 AM August 5 EDT)

From the bridge of Maddox, Herrick sees smoke rise from jet strikes on oil storage facilities at Vinh, realizes for first time scope of United States retaliation.

CHRONOLOGY OF UNITED STATES

SENATE INVOLVEMENT

IN GULF OF TONKIN INCIDENTS

1964

- August 3 Secretaries Rusk and McNamara brief Armed Services and Foreign Relations committees on first incident in off-the-record session, tell them attack was "unprovoked and in international waters"; deny any United States involvement in South Vietnamese raids on North Vietnamese islands.
- August 4 Leaders are called to White House in early evening to hear Johnson announce plans for retaliatory raids and ask passage of joint resolution approving his action and also his "determination... to take all necessary measures to repeal any armed attack... and to prevent further aggression."
- August 5 Resolution introduced and referred to Armed Services and Foreign Relations committees for joint hearing. Informant warns Senator Morse that Maddox was connected with South Vietnamese raids, and that doubt exists as to whether second attack actually took place. Suggest that he obtain ship's logs.
- August 6 Combined committees hear Rusk and McNamara for one hour and 40 minutes, again hear details on South Vietnamese raids and on violations of North Vietnamese waters. Only unfriendly questions come from Morse, who also casts only negative vote. Resolution reported to floor, where Morse, during four-hour debate, charges Maddox with complicity in raids, and with operating provocatively close to North Vietnam shore. Senator Fulbright, floor manager of resolution for Administration, denies Morse charge; also says resolution means no change in basic United States mission in South Vietnam.
- August 7 Fulbright dissuades Senator Nelson from submitting amendment requiring congressional approval before dispatch of land army to South Vietnam, saying he doesn't contemplate this will happen under resolution, even though wording permits President to do whatever he wishes. After two and a half hours of debate, resolution passes 88 to 2. Morse and Senator Gruening casting only dissenting votes. House vote is 416-0.

1965

September -
December

Breach between Johnson and Fulbright begins with Senator's critical speech on intervention in Dominican Republic; widens rest of year as several Senators denounce sustained strategic bombing of North Vietnam.

1966

January

In "educational hearings" on Vietnam War, Fulbright avows he and most of members of Foreign Relations Committee did not, in August 1964, "visualize or contemplate" that Johnson would make such broad use of Tonkin Resolution; asks that Administration consult Congress before expanding war further; is rebuffed by Secretary Rusk.

May

Assistant Secretary of State William Bundy, in secret testimony before Foreign Relations Committee, says he wrote draft paper similar to Tonkin Resolution in May or June 1964, several months before incidents, as part of "normal contingency planning."

May

Retired Rear Admiral Arnold E. True writes Fulbright that naval law does not recognize "warning shots" which Administration said Maddox fired as first volley of August 2, 1964 incident; Fulbright responds he has "reservation about their story... but no way effectively to question it."

August

Senator Stennis, at hearings of Senate Preparedness Subcommittee, tells Rusk the Administration "stands on mighty thin ice" in relying on Tonkin Resolution as legal justification of war; says that when nation goes to war, "it is a great mistake to fail to be just frank about it..."

1967

Spring

Senate rebuffs Johnson on long list of foreign policy measures: cutting foreign-aid bill; refusing money for fast-development logistics ships; rejecting long-term financing for Alliance for Progress through international groups; exposing and repudiating Pentagon's guarantee of loans so that underdeveloped nations can buy modern arms.

August

Fulbright introduces "national commitments resolution," and Undersecretary of State Katzenbach at hearings, calls Tonkin Resolution the "functional equivalent" of a declaration of war. Johnson challenges Senate to seek repeal if it wants to repudiate resolution. Academic and government witnesses criticize the President's accretion of war-making powers, say that Congress

should reclaim its constitutional share of powers to make and fulfill national commitments.

September Fulbright authorizes Foreign Relations Committee staff to begin quiet inquiry into Tonkin incidents; begins by requesting Maddox logs and cable traffic from Pentagon.

December Pentagon officials seek to dissuade Fulbright from pressing investigation, claiming that evidence is solid and that hearings would hurt national interest. Fulbright refuses, and is supported by Senator Russell, Chairman of Armed Services Committee. Informants in Pentagon guide Fulbright staff to key evidence.

1968

February 20 McNamara appears before closed session of committee.

February 24 Hearing transcript released which reveals (a) nature of Maddox mission; (b) preattack fears of Herrick; (c) revised orders given Maddox after August 2 incident; and (d) confusion about August 4 episode, both in Gulf of Tonkin and in Washington.

March 7 Fulbright tells Senate he considers Tonkin Resolution, "like any contract based on misrepresentation... null and void."

March 31 Johnson announces partial bombing halt and his decision not to seek reelection.

December 16 Fulbright formally ends inquiry with release of volume of supplementary documents.

TONKIN GULF RESOLUTION 1964

"Whereas naval units of the Communist regime in Vietnam, in violation of the principles of the Charter of the United Nations and of international law, have deliberately and repeatedly attacked United States naval vessels lawfully present in international waters, and have thereby created a serious threat to international peace;

"Whereas these attacks are part of a deliberate and systematic campaign of aggression that the Communist regime in North Vietnam has been waging against its neighbors and the nations joined with them in the collective defense of their freedom;

"Whereas the United States is assisting the peoples of southeast Asia to protect their freedom and has no territorial, military or political ambitions in that area, but desires only that these peoples should be left in peace to work out their own destinies in their own way: Now, therefore, be it

"Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, that the Congress approves and supports the determination of the President, as Commander-in-Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.

"SEC. 2. The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in southeast Asia. Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States, is therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom.

"SEC. 3. This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, except that it may be terminated earlier by concurrent resolution of the Congress."

APPENDIX E

DOCUMENTS RELATED TO EXECUTIVE CONSOLIDATION OF THE POWER TO DECEIVE

1948 - 1973

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THE STALEMATE MACHINE: A SCHEMATIC SUMMARY

The following imputed Presidential guidelines (A, below) will, under crisis conditions of the Vietnam conflict as perceived by Washington decision-makers, lead to policy choices and Executive performance conforming in some detail to those actually obtaining at major escalation points (Not necessarily to behavior in between them) between 1950-68. (Presidential choices significantly escalating U.S. involvement have occurred, in fact, only in crisis situations of impending failure.)

Together with decisions between major escalations, institutional consequences (including consequences for expectations), and external factors - mainly, GVN and DRV/VC behavior operating over time - these rules will generate an evolution of policy, involvement, and conflict very close to that observed over that period (E, C, and D below).

A. Presidential Decision Rules in Crisis

Rule 1. Do not lose South Vietnam⁹⁷ to Communist control - or appear likely to do so - before the next election.

Rule 2. Do not, unless essential to satisfy Rule 1 in the immediate crisis or an earlier one:

- a. bomb South Vietnam or Laos;
- b. bomb North Vietnam;
- c. commit U.S. combat troops to Vietnam;
- d. commit U.S. combat troops to Laos or Cambodia;
- e. institute wartime domestic controls;
- f. destroy Hanoi or Haiphong or the dike system, or mine Haiphong harbor;
- g. mobilize reserves;

⁹⁷ From 1949 till June, 1954, for this read "Vietnam" (especially Tonkin).

- h. assume full, overt administrative authority and military command in South Vietnam;
- i. invade North Vietnam;
- j. use nuclear weapons.

Rule 3. Do choose actions that will:

- a. minimize the risk of loss - or public expectation of eventual loss - within the next six months, so far as possible without violating Rule 2.
- b. if this risk is significant without certain actions so far "prohibited" by Rule 2, break constraints 98 to use the types of actions minimally necessary (as judged by President) to reduce the risk to a very low level.
- c. so far as consistent with Rule 1, and using fully any action no longer prohibited, maximize the probability of an eventual win in the sense of eliminating the Communist party in South Vietnam and assuring indefinitely a non-Communist Regime.
- d. so far as consistent with Rule 1, do not take actions that might appear to preclude or indefinitely forgo an eventual "win": i.e., a "no-win strategy."

B. Consequences for U.S. Policy

Viewed from inside, resultant policies reflecting the above rules show certain "discrepancies" when compared to internal predictions, recommendations, and stated aims (as well as to public statements), giving policy the internal appearance of being purposefully dedicated to preserving a stalemate.

- 1. Because of the short-term focus of Rule 1:
 - a. chosen policies appear - and are - almost exclusively oriented to short-term considerations, neglecting or trading off very large differences in predicted long-run costs, risks, benefits, and probability of success in pursuit of small reductions in short-term risk (i.e., risk of "losing" South Vietnam in the next six months, or prior to the next election.).
 - b. chosen programs are predicted internally to be inadequate - or at best, "long-shots" - in the long run either to "win" or even to avert defeat, (in contrast to public statements about them, and to some recommended but rejected policies.).

⁹⁸ Roughly in order shown under Rule 2, though, for example, any adjacent pair may be reversed, depending on judgment and circumstances.

- c. actual policies chosen emphasize predominantly military - rather than political - means, aims, considerations, and executive responsibility on both Vietnamese and American sides.

2. To compensate for avoidance of "constrained instruments"

(Rule 2), the chosen policy relies heavily upon:

- a. allied ground forces;
 - b. commitments and assurances to allies, warnings and threats to opponents;
 - c. clandestine activities;
 - d. other nonprohibited instruments (including economic and military aid; advisors; combat, logistic, mobility and air support).
3. For reasons reflecting both Rules 1 and 2:
- a. U.S. supports (intervening as necessary to instate or maintain) a narrow-based, right-wing, anti-Communist, "pro-American," authoritarian (since 1963, essentially military) regime in Saigon, despite its predicted (and actual) inability to win wider popular support for long-term self-sufficiency - foregoing pressure for either "broadening" or "reform," and accepting a condition of weak U.S. influence toward these "aims" or upon most other GVN policies or execution. (Between 1946-54, there was an exactly corresponding weakness of U.S. influence upon the colonial or military policies of its French ally, with the U.S. likewise forgoing any use of "leverage" despite correspondingly important support.)
 - b. in communications to Congress and the public, the Administration:
 - (1) expresses optimism (exceeding internal estimates at the time of decision) on both the short- and the long-term prospects of actual programs.
 - (2) conceals (if necessary, misleading or lying about) indications of possible inadequacy of current programs, including:
 - (a) pessimistic estimates or appraisals;
 - (b) internal recommendations for more extreme actions;
 - (c) planning activity for much greater effort or more extreme actions.
 - (3) describes the strategic stakes for the U.S. in maintaining a non-Communist South Vietnam in the most impressive and grave terms, relying upon extended "domino" premises (whether or not currently affirmed by intelligence analyses).
 - (4) conceals (lying or misleading as necessary) the full extent of programs actually decided upon (as well as follow-on programs expected to be approved), instead giving the impression that fully scheduled build-ups are resulting from sequential, marginal, contingent ad hoc decisions.

C. Institutional Consequences of Escalation

There are bureaucratic tendencies - except during military or budget crises - to assure superiors, and to believe, that current programs are adequate and are succeeding; to provide data supporting what the public is being told and to come to believe that it is true. These tendencies have the following consequences:

1. Internal operational reporting, program analysis, and high-level expectations (though not necessarily intelligence estimates) gradually move, as the chosen policy begins to be implemented, in the direction of the public optimism expressed earlier; early VC and GVN responses to the escalation reinforce this trend, to bring about a "Phase B" stage of genuine internal "euphoria" subsequent to - and caused by - the crisis-escalation of "Phase A."

2. During this "euphoric aftermath" of the escalation, more ambitious goals are adopted within the Administration (more weight is given to the long-term "win"); these do not lead to qualitative escalation by the President - despite urging to do so - but to expanded effort, toleration of rapidly rising costs, and increasingly optimistic public predictions.

D. Consequences for Further Escalation

1. The escalations themselves, and the institutional consequences above, increase the political stakes for a given Administration and its successor, and reinforce tendencies to obey the Decision Rules above when a Communist resurgence or GVN collapse returns conditions of crisis.

2. The recurrent estimates of the intelligence community - that the VC and DRV are unlikely to abandon or reduce their long-term aims

in South Vietnam in response to U.S. escalation, and likely instead to match increased US/GVN efforts to the extent necessary to frustrate them and threaten their defeat - are in fact, correct; therefore, the dynamic result of the Presidential decision rules above is what John T. McNaughton in January, 1966, called an "escalating military stalemate" (PP, IV, 47).

FROM THE PHILIPPINES

EYES ONLY FOR THE PRESIDENT FROM GENERAL TAYLOR

This message is for the purpose of presenting my reasons for recommending the introduction of a U.S. military force into South Vietnam (SVN). I have reached the conclusion that this is an essential action if we are to reverse the present downward trend of events in spite of a full recognition of the following disadvantages:

a. The strategic reserve of U.S. forces is presently so weak that we can ill afford any detachment of forces to a peripheral area of the Communist bloc where they will be pinned down for an uncertain duration.

b. Although U.S. prestige is already engaged in SVN, it will become more so by the sending of troops.

c. If the first contingent is not enough to accomplish the necessary results, it will be difficult to resist the pressure to reinforce. If the ultimate result sought is the closing of the frontiers and the clean-up of the insurgents within SVN, there is no limit to our possible commitment (unless we attack the source in Hanoi).

d. The introduction of U.S. forces may increase tensions and risk escalation into a major war in Asia.

On the other side of the argument, there can be no action so convincing of U.S. seriousness of purpose and hence so reassuring to the people and Government of SVN and to our other friends and allies in SEA as the introductions of U.S. forces into SVN. The views of indigenous and U.S. officials consulted on our trip were unanimous on this point. I have just seen Saigon 545 to State and suggest that it be read in connection with this message.

The size of the U.S. force introduced need not be great to provide the military presence necessary to produce the desired effect on national morale in SVN and on international opinion. A bare token, however, will not suffice; it must have a significant value. The kinds of tasks which it might undertake which would have a significant value are suggested in BAGUS (previous cable, 3.b. (7)). They are:

(a) Provide a US military presence capable of raising national morale and of showing to Southeast Asia the seriousness of the US intent to resist a Communist take-over.

(b) Conduct logistical operations in support of military and flood relief operations.

(c) Conduct such combat operations as are necessary for self-defense and for the security of the area in which they are stationed.

(d) Provide an emergency reserve to back up the Armed Forces of the GVN in the case of a heightened military crisis.

(e) Act as an advance party of such additional forces as may be introduced if CINCPAC or SEATO contingency plans are invoked.

MEMORANDUM FOR THE PRESIDENT

The basic issue framed by the Taylor Report is whether the U.S. shall:

- a. Commit itself to the clear objective of preventing the fall of South Vietnam to Communism, and
- b. Support this commitment by necessary immediate military actions and preparations for possible later actions.

The Joint Chiefs, Mr. Gilpatrick and I have reached the following conclusions:

1. The fall of South Vietnam to Communism would lead to the fairly rapid extension of Communist control, or complete accommodation to Communism, in the rest of the mainland of Southeast Asia and in Indonesia. The strategic implications worldwide, particularly in the Orient, would be extremely serious.
2. The chances are against, probably sharply against, preventing that fall by any measures short of the introduction of U.S. forces on a substantial scale. We accept General Taylor's judgment that the various measures proposed by him short of this are useful but will not in themselves do the job of restoring confidence and setting Diem on the way to winning the fight.
3. The introduction of a U.S. force of the magnitude of an initial 8,000 men in flood relief context will be of great help to Diem. However, it will not convince the other side (whether the shots are called from Moscow, Peking, or Hanoi) that we mean business. Moreover, it probably will not tip the scales decisively. We would almost be certain to get increasingly mired down in an inconclusive struggle.
4. The other side can be convinced we mean business only if we accompany the initial force introduction by a clear commitment to the full objective stated above, accompanied by a warning through some channel to Hanoi that continued support of the Viet Cong will lead to punitive retaliation against North Vietnam.
5. If we act in this way, the ultimate possible extent of our military commitment must be faced. The struggle may be prolonged and Hanoi and Peking may intervene overtly. In view of the logistic difficulties faced by the other side, I believe we can assume that the maximum U.S. forces required on the ground in Southeast Asia will not exceed 6 divisions, or about 205,000 men (CINCPAC Plan 32-59, Phase IV). Our military posture is, or with the addition of more National Guard or regular Army divisions, can be made, adequate to furnish these forces without serious interference with our present Berlin plans.
6. To accept the stated objective is of course a most serious decision. Military force is not the only element of what will be a most carefully coordinated set of actions. Success will depend on

factors many of which are not within our control - notably the conduct of Diem himself and other leaders in the area. Laos will be a major problem. The domestic political implications of accepting the objective are also grave, although it is our feeling that the country will respond better to a firm initial position than to courses of action that lead us in only gradually, and that in the meantime are sure to involve casualties. The over-all effect on Moscow and Peiping will need careful weighing and may well be mixed: however, permitting South Vietnam to fall can only strengthen and encourage them greatly.

7. In sum:

a. We do not believe major units of U.S. forces should be introduced in South Vietnam unless we are willing to make an affirmative decision on the issue stated at the start of this memorandum.

b. We are inclined to recommend that we do commit the U.S. to the clear objective of preventing the fall of South Vietnam to Communism and that we support this commitment with the necessary military actions.

c. If such a commitment is agreed upon, we support the recommendations of General Taylor as the first steps toward its fulfillment.

Sgd: Robert S. McNamara

JOINT CHIEFS' RECOMMENDATIONS ON
MILITARY COURSES OF ACTION

Excerpts from memorandum, "Recommended Courses of Action - Southeast Asia," from the Joint Chiefs of Staff to Secretary of Defense Robert S. McNamara, August 26, 1964.

3. The Joint Chiefs of Staff have considered Ambassador Taylor's statements of objectives and courses of action. In recognition of recent events in SVN, however, they consider that his proposed course of action B is more in accord with the current situation and consider that such an accelerated program of actions with respect to the DRV is essential to prevent a complete collapse of the U.S. position in Southeast Asia. Additionally, they do not agree that we should be slow to get deeply involved until we have a better feel for the quality of our ally. The United States is already deeply involved. The Joint Chiefs of Staff consider that only significantly stronger military pressures on the DRV are likely to provide the relief and psychological boost necessary for attainment of the requisite governmental stability and viability.

4. Recent military actions in Laos and against the DRV have demonstrated our resolve more clearly than any other U.S. actions in some time. These actions showed force and restraint. Failure to resume and maintain a program of pressure through military actions could be misinterpreted to mean we have had second thoughts about Pierce Arrow and the events leading thereto, and could signal a lack of resolve. Accordingly, while maintaining a posture of readiness in the Western Pacific, the Joint Chiefs believe that the U.S. program should have as concurrent objectives: (1) improvements in South Vietnam, including emphasis on the Pacification Program and the Hop Tac plan to clear Saigon and its surroundings; (2) interdiction of the relatively unmonitored VC lines of communication (LOC) through Laos by operations in the Panhandle and of the LOC through Cambodia by strict control of the waterways leading therefrom; (3) denial of Viet Cong (VC) sanctuaries in the Cambodian-South Vietnam border area through the conduct of "hot pursuit" operations into Cambodia, as required; (4) increased pressure on North Vietnam through military actions. As part of the program for increased pressures, the OPLAN 34 A operations and the DeSoto patrols in the Gulf of Tonkin should be resumed, the former on an intensified but still covert basis.

5. The Joint Chiefs of Staff believe, however, that more direct and forceful actions than these will, in all probability, be required. In anticipation of a pattern of further successful VC and Pathet Lao (PL) actions in RVN and Laos, and in order to increase pressure on the DRV, the U.S. program should also provide for prompt and calculated responses to such VC/PL actions in the form of air strikes and other operations against appropriate military targets in the DRV.

6. The Joint Chiefs of Staff recognize that defining what might constitute appropriate counteroperations in advance is a most difficult task. We should therefore maintain our prompt readiness to execute a range of selected responses, tailored to the developing circumstances and reflecting the principles in the Gulf of Tonkin actions, that such counteroperations will result in clear military disadvantages to the DRV. These responses, therefore, must be greater than the provocation in degree, and not necessarily limited to response in kind against similar targets. Air strikes in response might be purely VNAF; VNAF with U.S. escort to provide protection from possible employment of MIG's; VNAF with U.S. escort support in the offensive as well as the defensive role; or entirely U.S. The precise combination should be determined by the effect we wish to produce and the assets available. Targets for attack by air or other forces may be selected from appropriate plans including the Target Study for North Vietnam consisting of 94 targets, recently forwarded to you by the Joint Chiefs of Staff

PLAN OF ACTION ATTRIBUTED TO MCNAUGHTON

AT PENTAGON

Excerpts from memorandum, Sept. 3, 1964, "Plan of Action for South Vietnam," which the Pentagon study indicates was drawn up by Assistant Secretary of Defense John T. McNaughton.

1. Analysis of the present situation. The situation in South Vietnam is deteriorating. Even before the government sank into confusion last week, the course of the war in South Vietnam had been downward, with Viet Cong incidents increasing in number and intensity and military actions becoming larger and more successful, and with less and less territory meaningfully under the control of the government. Successful ambushes had demonstrated an unwillingness of the population even in what were thought to be pacified areas to run the risk of informing on the Viet Cong. War weariness was apparent. The crisis of the end of August - especially since the competing forces have left the government largely "faceless" and have damaged the government's ability to manage the pacification program - promises to lead to further and more rapid deterioration The objective of the United States is to reverse the present downward trend. Failing that, the alternative objective is to emerge from the situation with as good an image as possible in U.S. allied and enemy eyes.

2. Inside South Vietnam. We must in any event keep hard at work inside South Vietnam. This means, inter alia, immediate action:

- (a) to press the presently visible leaders to get a real government in operation;
- (b) to prevent extensive personnel changes down the line;
- (c) to see that lines of authority for carrying out the pacification program are clear.
- (d) to establish a U.S. naval base, perhaps at Danang;
- (e) to embark on a major effort to pacify one province adjacent to Saigon.

A separate analysis is being made of a proposal

(f) to enlarge significantly the U.S. military role in the pacification program inside South Vietnam - e.g., large numbers of U.S. special forces, divisions of regular combat troops, U.S. air, etc., to "interlard" with or to take over functions of geographical areas from the South Vietnamese armed forces ...

3. Outside the borders of South Vietnam. There is a chance that the downward trend can be reversed - or a new situation created offering new opportunities, or at least a convincing demonstration made of the great costs and risks incurred by a country which commits aggression against an ally of ours - if the following course of action is followed. The course of action is made up of actions outside the borders of South Vietnam designed to put increasing pressure on North Vietnam but designed

also both to create as little risk as possible of the kind of military action which would be difficult to justify to the American public and to preserve where possible the option to have no U.S. military action at all ...

Actions. The actions, in addition to present continuing "extra-territorial" actions (U.S. U-2 recce of DRV, U.S. jet recce of Laos, T-28 activity in Laos), would be by way of an orchestration of three classes of actions, all designed to meet these five desiderata - (1) from the U.S. GVN and hopefully allied points of view, they should be legitimate things to do under the circumstances, (2) they should cause apprehension, ideally increasing apprehension, in the DRV, (3) they should be likely at some point to provide a military DRV response, (4) the provoked response should be likely to provide good grounds for us to escalate, if we wished, and (5) the timing and crescendo should be under our control, with the scenario capable of being turned off at any time ...

4. Actions of opportunity. While the above course of action is being pursued, we should watch for other DRV actions which would justify (words illegible). Among such DRV actions might be the following:

- a. Downing of U.S. recce or U.S. rescue aircraft in Laos (likely by AA, unlikely by MIG).
- b. MIG action in Laos or South Vietnam (unlikely).
- c. Mining of Saigon harbor (unlikely).
- d. VC attacks on South Vietnamese POL storage, RR bridge, etc. (dramatic incidents required).
- e. VC attacks (e.g., by mortars) on, or take-over of, air fields on which U.S. aircraft are deployed (likely).
- f. Some barbaric act of terrorism which inflames U.S. and world opinion (unlikely).

6. Chances to resolve the situation. Throughout the scenario, we should be alert to chances to resolve the situation:

- a. To back the DRV down, so South Vietnam can be pacified.
- b. To evolve a tolerable settlement:
 - I. Explicit settlement (e.g., via a bargaining-from-strength conference, etc.).
 - II. Tacit settlement (e.g., via a piecemeal live-and-let-live Vietnam settlements, a de facto "writing off" of indefensible portions of SVN, etc.).
- c. If worst comes and South Vietnam disintegrates or their behavior becomes abominable, to "disown" South Vietnam, hopefully leaving the image of "a patient who dies despite the extraordinary efforts of a good doctor."

7. Special considerations during the next two months. The relevant "audiences" of U.S. actions, are the Communists (who must feel strong pressures), the South Vietnamese (whose morale must be buoyed), our allies (who must trust us as "underwriters"), and the U.S. public (which must support our risk-taking with U.S. lives and prestige). During the next two months, because of the lack of "rebuttal time"

before election to justify particular actions which may be distorted to the U.S. public, we must act with special care - signalling to the DRV that initiatives are being taken, to the GVN that we are behaving energetically despite the restraints of our political season, and to the U.S. public that we are behaving with good purpose and restraint.

APRIL, '65 ORDER INCREASING GROUND FORCES
AND SHIFTING MISSION

National Security Memorandum 328, April 6, 1965, signed by McGeorge Bundy and addressed to the Secretary of State, the Secretary of Defense, and the Director of Central Intelligence.

On Thursday, April 1, the President made the following decisions with respect to Vietnam:

1. Subject to modifications in light of experience, to coordination and direction in both Saigon and Washington, the President approved the 41-point program of non-military actions submitted by Ambassador Taylor in a memorandum dated March 31, 1965.
2. The President gave general support to the recommendations submitted by Mr. Rowan in his report dated March 16, with the exception that the President withheld approval of any request for supplemental funds at this time - it is his decision that this program is to energetically be supported by all agencies and departments and by the reprogramming of available funds as necessary within USIA.
3. The President approved the urgent exploration of the suggestions for covert and other actions submitted by the Director of Central Intelligence under date of March 31.
4. The President repeated his earlier approval of the 21-point program of military actions submitted by General Harold K. Johnson under date of March 14 and re-emphasized his desire that aircraft and helicopter reinforcements under this program be accelerated.
5. The President approved an 18-20,000 man increase in U.S. military support forces to fill out existing units and supply needed logistic personnel.
6. The President approved the deployment of two additional Marine Battalions and one Marine Air Squadron and associated headquarters and support elements.
7. The President approved a change of mission for all Marine Battalions deployed to Vietnam to permit their more active use under conditions to be established and approved by the Secretary of State in consultation with the Secretary of State.
8. The President approved the urgent exploration, with the Korean, Australian, and New Zealand Governments, of the probability of rapid deployment of significant combat elements from their armed forces in parallel with the additional Marines approved in paragraph 6.

9. Subject to continuing review, the President approved the following general framework of continuing action against North Vietnam and Laos:

We should continue roughly the present slowly ascending tempo of ROLLING THUNDER operations being prepared to add strikes in response to a higher rate of VC operations, or conceivably to slow the pace in the unlikely event VC slacked off sharply for what appeared to be more than a temporary operational lull.

The target systems should continue to avoid the effective GGI range of MIGs. We should continue to vary the types of targets, stepping up attacks on lines of communication in the near future, and possibly moving in a few weeks to attacks on the rail lines north and north-east of Hanoi.

Leaflet operations should be expanded to obtain maximum practicable psychological effect on North Vietnamese population.

Blockade or aerial mining of North Vietnamese ports need further study and should be considered for future operations. It would have major political complications, especially in relation to the Soviets and other third countries, but also offers many advantages.

Air operation in Laos, particularly route blocking operations in the Panhandle area, should be stepped up to the maximum remunerative rate.

10. Ambassador Taylor will promptly seek the reactions of the South Vietnamese Government to appropriate sections of this program and their approval as necessary, and in the event of disapproval or difficulty at that end, these decisions will be appropriately considered. In any event, no action into Vietnam under paragraphs 6 and 7 should take place without GVN approval or further Presidential authorization.

11. The President desires that with respect to the actions in paragraphs 5 through 7, premature publicity be avoided by all possible precautions. The actions themselves should be taken as rapidly as practicable, but in ways that should minimize any appearance of sudden changes in policy, and official statements on these troop movements will be made only with the direct approval of the Secretary of Defense, in consultation with the Secretary of State. The President's desire is that these movements and changes should be understood as being gradual and wholly consistent with existing policy.

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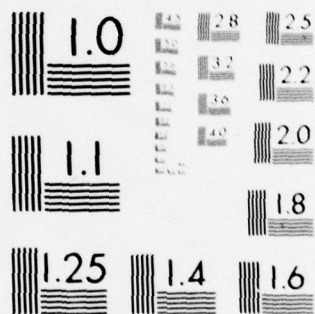
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